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CONSTITUTIONAL LAW IN 1910–1911

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1910.

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As was indicated in a preceding article,[1] the chief feature of the judicial year 1909–1910, from the point of view of Constitutional Law, was that the decisions, though numerous, were comparatively unimportant. On the contrary the chief feature of the constitutional decisions of the judicial year 1910–1911 was that an unusual number of them appeared to the public to be of great interest and consequence. Hence it is advisable to deal with the judicial year 1910–1911 in a manner wholly different from that which was adopted with its predecessor. The article covering the judicial year 1909–1910 collected all the constitutional cases in the Supreme Court of the United States, and, with the briefest possible indication of the point decided, distributed them among the several clauses of the Constitution which they served to annotate. For the judicial year 1910–1911, on the other hand, the plan adopted is to confine attention almost wholly to the few decisions making the year memorable. Thus it becomes possible to give a rather full statement of those few decisions and now and then to add comments.

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[1] *American Political Science Review*, vol. iv, pp. 483-497.

There were at least three interesting cases upon the extent of a state's police power. This is a topic necessarily connected with some others, such as the Contract Clause, or the Commerce Clause, or the Fourteenth Amendment. Two of the decisions in question involved the Fourteenth Amendment and the other involved the Commerce Clause.

One of the three cases referred to was that in which the Supreme Court upheld the bank depositors' guaranty act of Oklahoma. There were similar decisions as to the acts of Kansas and Nebraska; but the Oklahoma case, Noble State Bank *v.* Haskell,[2] was the one of greatest importance. The essential feature of a bank depositors' guaranty act is that it requires all banking corporations organized under the authority of the state to contribute to a central fund sums determined by deposits, and thus from these contributions, or from additional assessments if required, the deposits of insolvent banks are made good. The chief contention against the statute was that it deprives the bank of property in defiance of the Fourteenth Amendment. The answer given by the court was that, although it must be admitted that some one bank will pay contributions that will never be returned to it or to its depositors, still the co-operative security encourages the depositing of money, helps the circulation of bank checks, increases commerce, aids the community, redounds to the advantage of the banks themselves, and cannot be said to be in any respect outrageous. The opinion, by Mr. Justice Holmes, says: "We must be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be wain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the lawmaking power."

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[2] 219 U. S. 104, affirming 22 Okla. 48. The Nebraska act was upheld in Shallenberger *v.* First State Bank, 219 U. S. 114, reversing 172 Fed. 999. The Kansas act was upheld in Assaria State Bank *v.* Dolley, 219 U. S. 121, affirming 175 Fed. 365.

The second important case under the police power was German Alliance Insurance Company *v.* Hale,[3] in which was tested an Alabama statute that attempted to prevent combinations of insurance underwriters, and to that end provided that in case any underwriter was a member of a tariff association, the person insured, having sustained a loss within the terms of his policy, should recover twenty-five per cent more than his actual damage. An insured person having suffered loss and having recovered a judgment for an amount justified by the statute, the question for the Supreme Court of the United States became whether the twenty-five per cent excess was not to be deemed excessive, on the theory that the statutory provision deprived the underwriter of property without due process and denied to the underwriter the equal protection of the laws. The statute was upheld on the ground that combinations in insurance concern so many people as to be capable of exceptional regulation under the police power.

The third important case under the police power involved the Commerce Clause. It indicated that by and by the conservation of natural resources by the states may be almost capable of separate treatment as a topic in the law.[4] The decision in question, West *v.* Kansas Natural Gas Co.,[5] overthrew the attempt of Oklahoma to prevent natural gas from being piped out of the state. The ground was that the statute did not really attempt to conserve natural gas but simply attempted

[3] 219 U. S. 307.

[4] See Ohio Oil Co. *v.* Indiana, 177 U. S. 190, and Lindsley *v.* Natural Carbonic Gas Co., 220 U. S. 61.

[5] 221 U. S. 229.

to destroy interstate commerce, and thus came into conflict with the Commerce Clause of the Constitution of the United States.

The three cases already dealt with are of importance to the student of political science by reason of their various relations to the general question of the power of the states to restrict private action in the interest of the community. The cases remaining to be dealt with have little relation to that question and little connection with one another; but it will be found that for diverse reasons they, like the cases already mentioned, are worthy of attention even by persons outside the legal profession.

The cases on the police power, in addition to indicating, as just now said, the extent of the limitations placed by the Constitution of the United States upon the power of government to regulate more closely the acts of natural persons and of corporations, bear close relation to the severance of governmental duties between the United States and the states. In the period discussed there have been, besides the cases on the police power, two other important cases on the power of the states, Coyle *v.* Smith, and Bailey *v.* Alabama; and one, Flint *v.* Stone Tracy Co., on the power of the nation.

Coyle *v.* Smith [6] was a case which, taken in its evident import, determined that Congress cannot create states of diverse powers, and, to phrase the matter in another way, cannot, by limiting the powers of states which are about to be admitted to the Union, increase the power of the Federal Government. The problem arose because in the Act of Congress of June 16, 1906, entitled "An Act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State Government and be admitted into the Union on an equal footing with the original States," etc., it was provided that the capital must temporarily be at Guthrie and must not be changed before 1913. In 1910 the legislature passed an act removing the capital. In Coyle *v.* Smith the Supreme Court of the United States upheld the removal. Two judges dissented, but did not give their reasons. The opinion of the court, by Mr. Justice Lurton, went into the question in a very thorough and interesting fashion, and, after explaining that the power to locate its own seat of government is peculiarly a state power and cannot be denied to one of the original states, pointed out that a congressional authority to place new states upon a plane of inequality with the original states cannot be derived from the power to admit new states into the Union nor from the duty to guarantee to every state a republican form of government. "The definition of a 'state'," as the opinion says, "is found in the powers possessed by the original states which adopted the Constitution." It is not necessary to have much imagination in order to picture the possible results flowing from an opposite decision.

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[6] 221 U. S. 559.

In Bailey *v.* Alabama[7] an Alabama statute was construed as establishing peonage and was overthrown as conflicting with the Thirteenth Amendment. Peonage, as Mr. Justice Hughes says in the opinion of the court, has been defined as "a status or condition of compulsory service, based upon the indebtedness of the peon to the master." The Revised Statutes of the United States expressly forbid peonage. The Alabama statute provided that "any person, who with intent to injure or defraud his employer, enters into a contract in writing for the performance of any act of service, and thereby obtains money or other personal property from such employer, and with like intent, and without just cause, and without refunding such money, or paying for such property, refuses or fails to perform such act or service, must on conviction be punished by a fine in double the damage suffered by the injured party, but not more than $300, one half of said fine to go to the county and one half to the party injured"; and the statute proceeded to provide that if there were failure to perform the contract, without excuse for such failure, and without refunding the loss or paying for the property obtained, then there should be *prima facie* evidence of the intent to defraud the employer. The court considered that the effect of the statute was to make a mere breach of contract sufficient evidence of crime, with the result that under the threat of the criminal law the servant would serve involuntarily until he made good the advance received by him. This view was strengthened by the consideration that under the Alabama rules of evidence the accused would not be allowed to testify to his lack of intent to defraud. Two justices dissented on the general ground that independently of any statute a person who has contracted is compelled to pay damages in case he breaks his contract and that if a state adds a criminal liability "it simply intensifies the legal motive for doing right" and "does not make the laborer a slave." The opinion of the majority met this line of thought by saying that "the statute . . . furnishes a convenient instrument for the coercion which the Constitution and the Act of Congress forbid; an instrument of compulsion peculiarly effective as against the poor and ignorant, its most likely victims."

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[7] 219 U. S. 219.

Flint *v.* Stone Tracy Co.[8] upheld the Federal corporation tax. The problem before the court was whether this is a direct tax, for the tax is not apportioned among the states according to their population, and hence it does not comply with the requirement which is imposed upon direct taxes by Article I., Section 2, Clause 3, and Article I, Section 9, Clause 4, of the Constitution. The tax is measured by the net income. As there is no income unless business is carried on, it became easy for the court to hold that the tax is really an excise exacted for the privilege of doing business. As the tax is uniform throughout the United States it complies with the provisions of Article I, Section 8, Clause 1, as to excises. The doing of business in a corporate form is a peculiar and valuable privilege, and hence it became easy for the court to hold that the privilege of doing business in such a form can be made the basis of an excise. Yet there was the objection that the privilege is commonly granted by the states and not by the nation; and the answer was that this is of no consequence, for the usual subject matter of a national excise, the sale of intoxicating liquors, for example, has nothing to do with the nation as distinguished from the several states. There was the further objection that the chartering of corporations is a function of sovereignty and that the tax was hence a clogging of the sovereignty which has been reserved to the states; but there was the easy answer that the bodies paying the tax in question were not, like municipal corporations, exercising functions of the state, and that hence there was not in any proper sense an interference with sovereign powers. There were other points; but those here stated were much the most important and are enough to indicate that the problem as to national and state taxation of corporations is now a problem for statesmen rather than for lawyers. So much business is now carried on in corporate form that, as is intimated by the court in this opinion, the withdrawal of that business from the possibility of national taxation might eventually cripple the finances of the nation. On the other hand, an excessive taxation of corporations by the nation may cripple the finances of the states. The burden imposed by the present act—one per cent on the net income over $5000—is slight; and the immediate importance of the tax is that it places all corporations in a direct relation with the government of the nation, giving to the Federal Government a power to exact statements of their business, and giving to the corporations a reason for taking peculiar interest in national legislation.

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[8] 220 U. S. 107.

So much for the cases which more or less clearly have to do with the respective powers of state and nation. There was also one important case turning clearly upon the division of the governmental powers into legislative, judicial, and executive, and more especially upon the power of Congress to enlarge the functions of the Federal courts. This was Muskrat *v.* United States.[9] This was a case based upon an Act of Congress which, among other things, especially provided that "David Muskrat and J. Henry Dick, on their own behalf and on behalf of all Cherokee citizens enrolled as such for allotment as of September first, 1902, be . . . authorized and empowered to institute their suits in the Court of Claims to determine the validity of any acts of Congress passed since the said act of July first, 1902, in so far as said acts . . . attempt to increase or extend the restrictions upon alienation . . . of lands of Cherokee citizens, or to increase the number of persons entitled to share in the final distribution of lands and funds of the Cherokees"; and it provided also that "jurisdiction is hereby conferred upon the Court of Claims, with the right of appeal . . . to the Supreme Court of the United States." Suits having been accordingly brought, it was decided by the Supreme Court that, notwithstanding the statute, this court had no jurisdiction. The Constitution, Article III, Section 2, Clause 1 confines the judicial power to "cases" and "controversies." The opinion of the court, by Mr. Justice Day, after an illuminating discussion of authorities, came to the conclusion that there was not in this instance a case or a controversy; for, though the United States was made a party to the action, nevertheless, to quote the opinion, "it has no interest adverse to the claimants," and "the whole purpose of the law is to determine the constitutional validity of this class of legislation, in a suit not arising between parties concerning a property right necessarily involved in the decision in question, but in a proceeding against the Government in its sovereign capacity, and concerning which the only judgment required is to settle the doutbful character of the legislation," and "such judgment will not conclude private parties, when actual litigation brings to the court the question." The court, in short, considered the statute as in effect asking for an advisory opinion or for a decision of an hypothetical case, and consequently it held that Congress, in the words of the opinion, "exceeded the limits of legislative authority, so far as it required of this court action not judicial in its nature."

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[9] 219 U. S. 346.

There remain two cases which are very important from the point of view of political science, though of decidedly less importance from the point of view of Constitutional Law.

These are Gompers *v.* Bucks Stove and Range Co., and Standard Oil Company *v.* United States.

In Gompers *v.* Bucks Stove & Range Co.[10] it was decided that, as the contempt proceeding against Gompers and others for breach of an injunction had been begun wholly for the purpose of giving relief to the Bucks Stove and Range Co. and not at all for the purpose of vindicating the dignity of the court, it was improper for the court to inflict a sentence of imprisonment. It was explained that a fine payable to the Bucks Company would tend to indemnify it for its loss by reason of the breach of the injunction, but that imprisonment would have no such tendency. Imprisonment would, to be sure, tend to vindicate the dignity of the court; and it was distinctly said that it remains possible for the court issuing the injunction to begin a new proceeding for the purpose of inflicting that punishment. The opinion, which was written by Mr. Justice Lamar, gives an interesting and original discussion of contempt procedure; and, as the topic has become important by reason of its connection with labor disputes, this discussion may well rank as one of the most useful and most fruitful of the year. The court declines to pass upon the question whether, in view of the First Amendment, a court may by injunctions abridge "freedom of speech or of the press," saying: "We will not enter into a discussion of the constitutional question raised, for the general provisions of the injunction did not, in terms, restrain any form of publication. The . . . attack on this part of the injunction raises no question as to an abridgment of free speech, but involves the power of a court of equity to enjoin . . . from continuing a boycott which, by words and signals, printed or spoken, caused or threatened irreparable damage."

In Standard Oil Co. *v.* United States[11] the question was whether the provisions of the Sherman Anti-Trust Act of 1890 were infringed by combining in the hands of a holding company the stocks of corporations trading in petroleum and its products, the object of the combination being to exclude others from the trade. By the words of the statute "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal," and "every person who shall monopolize, or attempt to monopolize, . . . any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor." The Supreme Court of the United States found unanimously that the combination infringed the statute. The majority, for whom Mr. Justice White wrote the opinion, explained that in order to come within the prohibition of the statute a contract, combination, conspiracy, or attempted monopoly must be so extreme as to contemplate a restraint that is undue, or, in other words, unreasonable; but upon this point Mr. Justice Harlan dissented, relying upon earlier authorities. If the combination in the very litigation was an instance of unreasonableness, as apparently the whole court considered it to be, then the very case could have been decided without discussing what would have been the result in an opposite state of facts. In other words, the point as to which the court divided, and upon which almost the whole of the opinion—an extraordinarily brilliant one—spent its power, namely the now celebrated "rule of reason," was unnecessary to the decision of the very case. However correct may have been the court's views as to the importance of unreasonableness, these views, besides being unnecessary to the decision, were acceptable to both parties to the litigation and thus had not been subjected by counsel to full discussion. For these reasons, when a case of a combination that is reasonable comes before the court, the court may properly enough treat the question then squarely raised as not concluded beyond recall by the opinion in the present case, for of course a court has no power to decide a case which is really not before it. The reason for departing from judicial custom was doubtless that it seemed useful to let the world know what construction the court is likely to place upon the Sherman Anti-Trust Act in the future. Such a course, however useful, carries with it perils. More than half a century ago the same court, for patriotic reasons, gave its views upon certain other very different matters not actually before it; and the resultant public criticism of the court is regretted by lawyers to this day. That case was Dred Scott *v.* Sandford.[12] *Absit omen.*

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[10] 221 U. S. 418.
[11] 221 U. S. 1.

[12] 19 Howard, 393.

THE PRESENT STATUS OF THE HOME RULE QUESTION.[1]

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Bibliographical Note.—Obviously it is impossible to give a definite authority for many of the statements made in an article of this sort. I have, for the most part, therefore, omitted any footnotes whatever. Naturally I have used such standard works as Lecky, whose chapters on Irish questions I have found to be based on a more thorough research than those dealing with purely British affairs, and Morley's Gladstone. I have consulted, as well, the various parliamentary papers and reports relating to the Home Rule bills of 1886, 1893, and 1912. One of the most useful expositions of Mr. Asquith's bill is the series of papers edited for the Eighty Club by Prof. J. H. Morgan, and recently published under the title, "The New Irish Constitution." I need scarcely mention that I have referred to Dicey's "England's Case Against Home Rule" and "A Leap in the Dark"; the Earl of Dunraven's "The Legacy of Past Years"; G. Locker Lampson's "A Consideration on the State of Ireland in the Nineteenth Century"; Justin H. McCarthy's "The Case for Home Rule"; Sidney Brooks' "Aspects of the Irish Question"; Harold Begbie's "The Lady Next Door"; R. Barry O'Brien's "Life of Charles Stewart Parnell," "Dublin Castle and the Irish People," "Two Centuries of Irish History," "Home Rule Speeches of John Redmond," and other similar works. But the greater part of the material on which this article is based has been gathered from current newspapers and magazines and from personal observation in the course of my residence in England during the past three or four summers.

It is one of the commonplaces in the history of Europe in the nineteenth century that the two most striking characteristics observable in the political changes of that period are an assertion, on the one hand, of the right of a much larger proportion of the people than formerly to a share in the government and, on the other, the rise and persistence of what may be termed a spirit of nationality. Both of these forces were entirely ignored by the diplomats who assembled at Vienna in 1814–1815, but a combination of the two was destined to work almost a complete overthrow of the system inaugurated by that Congress. The Revolutionary and Napoleonic wars no doubt intensified the national consciousness already existing in England, but their influence in this direction was naturally felt to a much greater extent in such Continental countries as Spain and Prussia. In England, indeed, these wars had a decidedly reactionary effect on the movement toward popular government. It is not exaggerating to say that they delayed the reform of the parliamentary representation and the extension of the suffrage for more than a quarter of a century. But, after the movement for reform got under way again in England, Englishmen became increasingly liberal in their sympathies. Thenceforward aspiring Continental nationalities counted with good reason on a sympathetic hearing by a large and influential party of the English people. Greeks, Italians, Hungarians, Poles, and Bulgarians, in turn, found it not difficult to gain British good will in support of their causes. Indeed, Great Britain, ere long, came to look upon herself as a sort of international apostle of liberty and nationality. During all of this time, beginning with the very first year of the century and continuing to the present day, Great Britain has herself been a conspicuous violator of the principle which has met with her sympathy when maintained by Continental peoples. An Irish national spirit still survives in spite of more than a century of effort to destroy it, first by hostile measures and later by kindness. This is a noteworthy fact, because it signifies that the fight of the Irish for self-government must be considered as a part of the political movement which has contributed so materially to shape the character of the German Empire, the kingdom of Italy, and in fact nearly every European nation.

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[1] For a further analysis of the pending Home Rule Bill see the note of Professor Shepard in the "Notes on Current Legislation" in this issue.

Naturally those who are opposed to Home Rule deny the correctness of this view. Mr. Balfour, the late leader of the Unionist party, asserts that "all this talk of restoring to Ireland Irish institutions, and of governing Ireland according to Irish ideas, has no historic basis whatever." There is an element of both truth and falsehood in this statement. A review of the salient facts in Irish history pertaining to this controversy will make that point clear. We need not deal here in precise definitions of nationality, and we may safely take no account of the disputed existence of a national spirit in Ireland previously to the advent of the English. It profits little to test medieval institutions by the standards of the present day. Besides, although it is unquestionably rooted in the events of earlier years, the demand for Home Rule with which the British Parliament is now attempting to deal is preeminently a product of the nineteenth century.

There is not space here to trace the course of the disputes between England and Ireland from the passage of Poyning's Act in the latter part of the fifteenth century to its repeal in the latter part of the eighteenth. Yet it is impossible to get a clear understanding of the present situation in Ireland without some knowledge of the reasons why the Irish fought to maintain this law against the demands of the Tudors and then raised rebellion to secure its repeal in the closing years of the American Revolutionary War. This law, which provided that Irish legislation should originate in Ireland, be transmitted to England and approved by the English Privy Council, and finally be acted upon by the Irish Parliament, was an effectual check on the schemes of Henry VIII and Elizabeth. But the democratizing influences of the seventeenth century had operated to transform the Parliament that Grattan dominated into a more self-assertive body. England was now at the end of a disastrous war and was, therefore, not in a position to resist the demands of the Volunteer bands that supported Grattan. The result was the ill-fated experiment which lasted from 1782 until Pitt put an end to it in 1801.

Whether Grattan's Parliament, as it is called, would under different conditions have furnished a basis for the permanent settlement of the Irish question will always be a disputed point. Certainly no ship of state was ever launched under less auspicious circumstances or sailed a stormier sea. The British administration that sanctioned it fell almost immediately afterward, and the reins of the English government were held by three different factions within the next two years. Whatever liberal views toward Ireland Pitt, the leader of the party that ultimately triumphed, had were vitiated by the attitude of the Irish Parliament toward the Regency dispute in 1788. True he promoted the Catholic relief act of 1793, a measure that looked toward the preservation of Irish nationality. But this act, though accepted by the Protestant ruling faction, was received with little enthusiasm by the friends of the minister. And the disturbances incidental to the French war, culminating in the uprising of 1798, caused Pitt to support the project for a union of the two countries with the result that it was consummated by means that only an extremely desirable end could justify. The notorious character of the methods by which it was accomplished naturally served to make the union unpopular in Ireland and contributed to stir the national self-consciousness that was destined ultimately to voice a demand that the act of union be repealed.

But this is far from saying that the Irish now desire a revival of Grattan's Parliament, though none of the projects for Home Rule brought forward in recent years involve as complete a separation from England as was granted by the Rockingham Whigs in 1782. Nor is it so paradoxical as it seems that the ruling class in Ireland under the old régime, the party that was most persistent in its opposition to the Union, should now be fanatical in its opposition to the restoration of Home Rule. Native Irishmen had little voice in Grattan's Parliament, which represented only the Protestant minority, who were for the most part descendants of the English and Scotch who had crossed over in the course of the seventeenth century disputes. Nevertheless, there are indications that it might have been possible in the decade preceding the act of union to reconcile the discordant elements in the Irish population. The Protestants assented to the act of 1793 which gave Catholics a right to vote for members of Parliament on the same terms with themselves. And they offered no serious objections to Fitzwilliam's proposal in 1795 to extend those privileges so as to enable Catholics to sit in Parliament. The vetoing of this scheme by the

British cabinet did much itself to create distrust in the Catholics. And when Pitt, because of the obstinacy of George III or because of less meritorious characteristics in some of his advisers, was unable to fulfil the promise of emancipation which he had made in order to win the support of the Catholics for the union, any reconciliation of the two peoples under the same government was made well-nigh hopeless.

George III lived much too long for the good of his country, and George IV inherited his father's prejudices concerning the Catholic question without many of his better qualities. Between them they managed to delay the relief Pitt had promised the Catholics till 1829. Therefore, when emancipation did come, it was impossible for a half measure to overcome the antagonism to British rule which years of coercion had aroused in the Irish. And emancipation, even to this day, has not given Catholics a proportionate share of authority in the Irish government. They outnumber the Protestants three or four to one, yet, according to a recent estimate, only three of the seventeen judges in the high court of justice, eight of the twenty-one county court judges and recorders, five of the thirty-seven county inspectors of police, 62 of the 202 district inspectors of police, and 1,805 of the 5,518 ordinary justices of peace are Catholics. Since these conditions exist after nearly a century of emancipation there is little wonder that the Irish persist in their demand that they be allowed to choose their own rulers.

Moreover, the English government has shown a singular want of tact in dealing with the other grievances of which the Irish have complained. There is not space here to enter into details, but in the first three quarters of a century after the union not many years passed without some legislative or executive action designed for the coercion of the Irish, while remedial measures were either neglected entirely or delayed so long that they failed to have the desired conciliatory effect. In fact, almost every remedial measure granted in the course of that time was won as the fruit of Irish rebellion or disorder. O'Connell in 1835 undertook to adopt a different policy and helped Lord John Russell turn out Peel's government in the hope of securing a settlement of the tithe question, at that time the chief grievance put forward by the Irish. Three years later Lord John himself accepted a measure similar to the one Peel had proposed and because of which Lord John had been able to defeat him. The movement for the repeal of the act of union, the trial of O'Connell, and the rise of the Young Irelanders followed. The land question next claimed attention, but the British Parliament refused to take it seriously or to grant relief until the Fenian Society procured the disestablishment of the Irish church in 1869 and the passage of the land act of 1870 by bringing Ireland to a state of open rebellion. Other land acts followed in 1881, 1885, 1887, 1888, 1889, 1891, 1896, 1903, 1907, and 1909. The Unionist party has become as enthusiastic as the Liberal in supporting this movement to restore land to the peasant tenantry. Unionists argue that the demand for Home Rule was a product of the hardships resulting from the old system of land tenure and consequently that the desire for Home Rule will not long survive after these hardships are relieved. The several land acts have certainly contributed much to benefit the Irish peasants, but they have apparently so far made little impression on the sentiment in favor of Home Rule.

The natural effect of this long period of unsuccessful repression was to intensify the national consciousness of the Irish. The immediate success of the Home Rule Association, when it was organized in 1870, is, therefore, not in the least surprising. The new party returned fifty-nine members to Parliament in 1874, sixty-one in 1880, and eighty-five in 1885, around which figure the Nationalist representation in the House of Commons has since remained. The object of the party thus formed, as set forth in the resolutions of the original association, is to obtain for Ireland a Parliament of her own and to "secure for that Parliament, under a federal arrangement, the right of legislating for, and regulating all matters relating to the internal affairs of Ireland, and control over Irish resources and expenditure, subject to the obligation of contributing our just proportion of the Imperial expenditure." This organization, under the successive leadership of Butt, Parnell, and Redmond, has fought the battle for Home Rule to its present stage, and much of the ground necessary to ultimate victory has certainly been won. For example, it is something to have Mr. Asquith, the first prime minister to visit Dublin while in office since the union, declare recently to an Irish audience in the Irish capital that Ireland is a "nation." And if a century of history is any test of nationality it is impossible not to agree with that conclusion, a conclusion which places the movement for Home Rule in the list of struggles for self-government and national existence of which the nineteenth century affords so many examples.

Either the failure of every other measure to conciliate the Irish or, as Unionists will have it, the political situation resulting from the general election of 1885 converted Gladstone to the Home Rule policy and gave rise to the abortive Home Rule bill of 1886. The result was division and temporary disaster to the Liberal party. In 1893 another bill was introduced and carried through the House of Commons only to meet defeat in the House of Lords. Obviously here was another lion that had to be removed from the way before the Nationalists could hope to bring their plan to final accomplishment. Luckily for them the House of Lords gave to Liberals as many grounds of complaint as it gave to Nationalists. In consequence, means for avoiding this hitherto insurmountable barrier to Liberal legislation was sought in that very conservative though much abused measure, the Parliament Act of 1911. The road having been cleared of the obstruction that blocked the way in 1893, another Home Rule bill has been introduced into Parliament and is now pending. Is there any probability that this bill will pass into law? Should it pass, is it calculated to solve the Irish problem? We shall consider these questions in reverse order.

Briefly stated, the Irish problem is as follows. Geographically, England and Ireland are near to each other and yet not contiguous. As Grattan finely put it, the ocean on one side of Ireland protests against separation from England, while the sea on the other side protests against union. Historically, the efforts to join in a legal organic union two peoples that have fundamentally different racial and religious characteristics, after more than a century of trial, cannot be said to have been conspicuously successful. At present an overwhelming majority of the Irish people are organized into a political party for the purpose of demanding a larger measure of self-government for their country. Other issues are subordinated to this one, and there seems to be no present prospect that Irish opinion concerning other questions can find expression at the polls until the question of Home Rule is finally determined. Nor can this be termed a mere temporary ebullition of national spirit. Beginning its organized form more than forty years ago the present movement has gained rather than lost ground. The only element of the population that is opposed to Home Rule is alien both in race and religion to the native Irishmen. The testimony of both history and geography would seem, therefore, to be on the side of the Nationalists.

But it is one thing to assert the general proposition that Ireland ought to have Home Rule. To devise a workable scheme of government that will combine in the right proportions the measure of local autonomy and imperial unity that all advocates of Home Rule profess to desire is quite a different matter. Take the question of the legislature, for example. If the Irish are to have a parliament at Dublin to regulate their local affairs, ought they also to have representatives in the parliament that will regulate, along with imperial concerns, the local affairs of England and Scotland? Yet, if Ireland is denied this privilege, she is denied a voice in the legislature which, under every scheme of government that has hitherto been suggested, will impose certain of her taxes. Gladstone contributed little toward the settlement of this problem, which is one of the most troublesome that the Irish business presents. In 1886 he proposed that the Irish should be deprived entirely of their representation at Westminster. By 1893 he had decided that it would be sufficient to cut down their representation to eighty members, though he was still in doubt as to whether these members ought to have a voice in the determination of matters that related solely to Great Britain. Mr. Asquith and his colleagues have compromised the question by reducing the number of Irish members to forty-two. There is still a possibility that the Irish vote may hold the balance of power and turn out a British administration on a purely British question. But in the nature of things such an event is scarcely likely to occur. In the first place, ministries are not usually overthrown on purely local questions. Then, too, it is unlikely that the Irish, voting as a body, will take the responsibility of defeating a ministry on a matter of that sort.

Not the least knotty question that confronts the framers of a Home Rule bill is the settlement of the financial relations between the two countries. In 1886 Gladstone proposed to give to Ireland complete autonomy in the levying of all taxes except customs and excise. The post office was to be transferred to the Irish Government whenever it should be demanded. The collection of all taxes, however, was to remain in the hands of the imperial government. At that time there was a considerable surplus in the revenues collected in Ireland over the expenditure for Irish services, and Gladstone proposed that Ireland should contribute one fifteenth of the total charges for imperial expenditure. In 1893 there was still a surplus of Irish revenue over local expenditure, and Gladstone again proposed that Ireland should make a contribution to the imperial exchequer. In this bill, however, he proposed simply to retain the total product of the Irish customs for imperial purposes, with the provision that the imperial government should defray the expenses of the Irish constabulary in as far as they exceeded £1,000,000. For the first six years after the passage of the act the imperial government was to continue to collect all taxes in existence at that time and any additional ones that the Irish Parliament might levy. After the expiration of six years all taxes except customs and excise were to be imposed and collected by the Irish government, which was also to collect the excise levied by the imperial parliament.

Mr. Asquith, in his Government of Ireland Bill of 1912, has adopted a system differing radically from either of those proposed by Gladstone. The social and agrarian measures recently set on foot in Ireland by the British parliament have changed the surplus in the Irish revenues to a deficit. The question is no longer how much Ireland can contribute to imperial expenditure but how much the British exchequer must contribute to Ireland. In 1895–6 the "true"[1] Irish revenue was estimated at £8,034,000, in 1910–11 at £10,300,000, an increase of £2,226,000. In the same years the local expenditure in Ireland increased from £5,938,000 to £11,344,000; so that, whereas in 1895–6 Ireland contributed to the imperial exchequer the sum of £2,066,000, in 1910–11 she was a burden on the empire to the extent of £1,044,000. In view of these facts, Mr. Asquith proposes that for the present Ireland shall have only a partial autonomy in the matter of finance. An Irish exchequer and an Irish consolidated fund are to be established and an Irish auditor general appointed. But the imperial government will retain the duty of imposing and collecting taxes. The manner in which the financial obligations of the two kingdoms will be apportioned can perhaps best be illustrated by taking some one year for an example. In 1912–13, for instance, it is estimated that the true Irish revenue will amount to £10,839,000. In addition to this sum the imperial exchequer will for three years contribute £500,000, to be gradually diminished at the end of that period, making a total income of £11,339,000. It is proposed to transfer £7,562,000 of this sum, including the postal revenue, to the Irish exchequer for Irish use. The remainder is to be retained in the hands of the imperial government and apportioned among the reserved services, which include old age pensions, national insurance and labor exchanges, land purchase, the constabulary, and the collection of the revenue. This budget is not to be affected by alterations in imperial taxation. The Irish parliament, on the other hand, can increase taxes to get additional revenue or diminish them and have the decrease in returns substracted from the amount transferred to the Irish exchequer. The Irish parliament cannot for the present, however, impose taxes on articles not taxed by the imperial parliament, and its additions to the income-tax, death duties, or customs must not exceed ten per cent. of the existing rate. Furthermore, should the Irish parliament differentiate the custom or excise duties in the two countries it must provide a corresponding differential on goods passing from one country to the other. But these provisions are, in large part, to be temporary. The constabulary is to be transferred automatically to the Irish government after six years. The Irish parliament will also have the right, on twelve months' notice, to take over the management of old age pensions and national insurance. The land purchase scheme, it seems, is to remain permanently in the control of the imperial government. Any normal increase in the Irish revenue is to be applied to the eradication of the deficit against the imperial exchequer. Whenever this deficit shall have been entirely wiped out and shall not have reappeared for the space of three years, further arrangements are to be made concerning the collection of Irish taxes and Irish contribution to imperial expenditure. Such, in brief, are the financial provisions of Mr. Asquith's bill. Only actual experience can determine whether they are workable.

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[1] The "true" revenue does not include the amount collected in Ireland on goods consumed in England.

The third perplexing task in framing a Home Rule bill is the provision of safeguards for Ulster. The question of Ulster is much more easily understood than settled. Belfast, the metropolis of the north of Ireland, and its environs are peopled largely by descendants of Englishmen and Scots who migrated thither in the seventeenth century and who are still zealous adherents to the religion of their fathers. The native Irish population is predominantly Roman Catholic. In other sections of Ireland recent observers agree that a spirit of friendliness and toleration prevails between Catholics and Protestants. But in Ulster the old intolerance persists with much of its ancient violence. Gladstone, therefore, in both of his bills provided elaborate limitations to prevent an Irish, and therefore a Catholic, parliament, from infringing on the rights of their Protestant fellow-countrymen. Mr. Asquith has attempted to solve the same problem in a much shorter clause, which provides that:

"In the exercise of their power to make laws under this act the Irish parliament shall not make a law so as either directly or indirectly to establish or endow any religion, or prohibit the free exercise thereof, or give a preference, privilege or advantage, or impose any disability or disadvantage, on account of religious belief or religious or ecclesiastical status, or make any religious belief or religious ceremony a condition of the validity of any marriage." Unionists deny that it will be possible to enforce these safeguards. And it cannot be gainsaid that unless a different spirit is shown than seems at present to exist in Belfast it will be difficult to prevent Catholics from resorting to retaliatory measures.

As regards the machinery of the proposed Irish government itself not much can be said here. There is to be a bicameral legislature with a responsible executive expressly provided for by law. The Lord Lieutenant will, of course, also be responsible to the British cabinet. He is to have a twofold veto power over the acts of the Irish legislature. If he should be in doubt as to the constitutionality of a measure he is empowered to refer it forthwith to the judicial committee of the Privy Council, which is to be the Irish court of last resort. Acting on the advice of the imperial cabinet he may also veto a bill from motives of policy; but it remains to be seen how far this power will be exercised. The Irish legislature itself is to consist of two houses, one of which will be elected by the people and will be supreme in matters of finance after the fashion of the British House of Commons. The Senate, or upper house, is to consist of forty members nominated by the Lord Lieutenant for eight years. In case of the disagreement of the two houses on a legislative matter, when the Senate shall have twice rejected a measure passed by the House of Commons, the two houses shall meet together and by a joint vote finally dispose of the question. The Irish legislature is to be granted the power to make laws for the "peace, order, and good government of the kingdom." It should not be forgotten, however, that the imperial parliament, in the plenitude of its legislative powers, can pass laws contrary to those passed by the Irish parliament, and in case of a conflict the decision would undoubtedly be in favor of the imperial law. The supremacy ot the imperial legislature is specifically maintained in the bill, though that provision was scarcely necessary in view of the unlimited scope of the powers of the British parliament. Moreover, the Irish parliament will not be able to legislate extra-territorially, and a number of subjects are excepted from its purview entirely, such as the succession to the Crown, making war or peace, the army and navy, dignities and titles of honor, treason and alienage, navigation and merchant shipping, copyright and trade-marks, coinage, and several other subjects of a similar character. The wonder is, perhaps, that there is not a greater number of exceptions. Company and factory acts, for example, might very well have been kept uniform for the British Isles.

Mr. Asquith frankly proposes his bill as the first step in a more extensive scheme of devolution that is designed to transfer to Scotland and Wales as well as to Ireland the management of their local affairs. Nevertheless, many advocates of this scheme deny that they favor the introduction of the federal principle into the government of Great Britain and Ireland. They disagree with the contention of Professor Dicey and maintain that it is one thing for a sovereign parliament to delegate certain of its duties to local legislatures and quite another for previously sovereign states to unite for the purpose of establishing a strong central government. In the first case the imperial parliament would retain its supreme legislative powers, as it does under the Government of Ireland Bill, and would merely transfer to the local legislatures powers which, being composed of members better acquainted with local conditions, they could exercise more advantageously than the imperial parliament itself. The advocates of this theory insist that their scheme does not limit in the least the present absolute power of the imperial parliament, since the power to create implies also the power to destroy the creature. By this argument they meet the objections of those who complain that this decentralization of the government will weaken the empire. Their scheme, they maintain, makes it possible to satisfy the national aspirations of the inhabitants of the different parts of the kingdom, to secure for each part a better local administration than it has at present, and yet to preserve the unity of the empire and the supremacy of the imperial government.

But, after all, the most interesting question at present concerning the Government of Ireland Bill is whether it has any chance of becoming a law in the near future. As regards this question, any prophecy at the present juncture would be rash. Nevertheless, there are some facts which can be stated with reasonable certainty and which are worthy of the attention of students of current politics. One of the most evident of these facts is that the majority of Englishmen no longer get excited about the question. True enough a certain class of Unionist leaders are using strong, not to say violent and discourteous, language in the newspapers, on the platform, and even on the floor of the House of Commons. But as far as the results have been expressed in votes they cannot be said to tell very strongly against Home Rule. The administration has lost several seats at recent by-elections and has held others by decreased majorities, as the administration of the day usually does. But in none of these contests have the Unionists shown a disposition to feature Home Rule as an issue, except perhaps in Manchester. But since 1903 the voters of that city have developed the habit of returning Liberal members in general elections, when there is a possibility that the election of a Unionist member might mean the success of the policy of protective tariffs, and Unionists in by-elections, when "free trade" is not in danger. Much water has passed under the bridges since 1886, even since 1893, and there is every indication that in the meantime the view that some measure of Home Rule is the only possible solution of the Irish question has gained ground in Great Britain until it now commands the approval of a majority of the voters. The most rabid Unionist leaders themselves complain of the apathy of their followers. An examination of the arguments used by the leaders of the parties that support the rival policies will make clearer the reasons for the existence of this apathy.

Since they are proposing a change from the present system, we naturally consider first the arguments of those who favor Home Rule as an imperial policy. Before entering upon that subject, however, perhaps it would be well to remark that a great many Unionists appear to be perfectly serious in their belief that the Liberal party is not at present influenced in its action by these arguments. The Asquith administration could certainly not command a majority in the House of Commons without the support of the Irish Nationalists. Unionists, therefore, say, and apparently believe, that the prime minister and his colleagues have "sold themselves for place," and that they do not really believe in the measures they are supporting. It would be a mistake, however, to take this view too seriously. Even though we could believe the ministers, who are admitted by many Unionists to be a more able group of men than those who occupy the front opposition bench, to be so entirely devoid of political scruples, it is impossible to conclude that all their eminent supporters out of office, publicists, journalists, and the like, are also of that character. We are obliged to believe, therefore, that the arguments used by the advocates of Home Rule represent the actual opinions of a considerable number of English people.

We need not consider the historic grievances of the Irish. They are admitted by both parties. The difference of opinion concerns the character of the remedy that ought to be adopted. Those who favor the policy of Home Rule maintain that the last century and a half, and particularly the last half-century, has for various reasons seen the rise of a national spirit in Ireland which cannot be ignored and ought not to be suppressed if such a thing were possible. They argue that the obvious course to pursue is to recognize this nationalism as a fact and to grant to the Irish a large measure of autonomy, though at the same time preserving the supremacy of the imperial parliament. Those who hold this view believe, moreover, that this policy will serve to bring the English and Irish peoples closer together, and that the empire would gain a more loyal support from Ireland with Home Rule than it ever can from an Ireland governed by coercion and held by force to an unpopular union. Those who favor the policy of Home Rule say, in the third place, that social conditions in Ireland are different in many respects from those in England and, therefore, that the two countries require a correspondingly different legislative and executive treatment. Manifestly, in that case, natives of Ireland, inheriting the traditions of the country and conversant with its peculiar problems, would be more likely to deal wisely with these questions than statesmen who regard them rather as pestiferous incidents to a larger task than as matters of prime importance. Finally, those who favor the policy of Home Rule argue, and bring facts to support their contention, that the imperial legislature is at present overworked and that if the general problems of the empire are to receive the attention they deserve, questions of a local character will have, in the course of time, to be delegated to local legislatures created for that purpose. In view of the widespread demand for such a legislature in Ireland, they argue that the present is an auspicious time and Ireland an eminently proper place to begin the inevitable process of devolution.

Now these are arguments of undeniable weight, and we naturally expect to find those who favor the maintenance of the union offering arguments equally worthy of consideration in support of their view. In 1886 or in 1893 we should not have been disappointed in that expectation. Those who took their cue from Dicey's "England's Case Against Home Rule" and "A Leap in the Dark," and similar works may not in every case have been justified in their inferences or correct in their theories; but they at least had the merit of approaching a difficult question in a sane and dignified manner. Only the blindest partizan can say as much for the leaders of the present opposition to Home Rule. Of course there are still many Unionists whose convictions are based on considerations that have to do with the larger interests of the empire. But arguments of this character seldom or never come from those who sit on the present opposition front bench in the House of Commons or from those who are responsible for the recent tactics of the Unionist party. Mr. Bonar Law and his colleagues seem to have decided to rest their case in opposing Home Rule entirely on the likelihood that Ulster will resist, an argument that was used in turn against Catholic emancipation and the disestablishment of the Irish church. Ulster, it seems, is always going to fight, and Ulster will in every case be right, to paraphrase Lord Randolph Churchill. It cannot be denied that a part of the population of a portion of Ulster retains more of seventeenth century fanaticism than is probably to be found in any other district in the British empire. Even the English friends of Ulster say that. Nevertheless, Nationalists have the consolation of remembering that none of Ulster's recent fights have reached serious proportions and that her contentions have hitherto proved to be far from right in the result.

Since present-day Unionists base their opposition to the policy of Home Rule almost entirely on the probability that Ulster will resist, it is necessary to examine Ulster's position more closely. The obvious retort that Liberals use, namely, that the Nationalists, who constitute a large majority of the population, have fought in the past and may very likely fight again if denied Home Rule, does not go to the root of the matter. Perhaps the religious question is the most vital part of Ulster's case. Her friends deny absolutely any possibility that a Catholic Nationalist parliament would do her justice. They scorn, therefore, the proposals of the ministers to incorporate in their scheme any reasonable safeguards against injustice that the friends of Ulster may suggest. Indeed, the present leaders of the Unionist party, apparently forgetting that the Home Rule bill, should it pass into law, will have the whole power of the empire to enforce it, have formed the habit of speaking in disparaging terms of the provisions of a prospective law of the land as "paper safeguards," intimating that they will scarcely be worth the paper on which they will be recorded. Unionists, however, do not usually justify all the prejudices of Ulster.

They merely cite them as facts and as in themselves a sufficient reason for withholding the demands of the Nationalists.

This view might deserve more consideration had not the Unionist leaders, apparently despairing of arousing much hostility to Home Rule in England, spent the past few months in frantic efforts to stir up those very passions in Ulster, the existence of which they assign as the reason for their opposition to the Nationalist policy. There has been much loose talk about breaking laws and lynching ministers, which might be dismissed as unworthy of consideration had not Mr. Bonar Law himself said—as he tells us, with a full realization of his responsibility as leader of his party—first at Blenheim and later on the floor of the House of Commons, that should the proposed Home Rule bill be passed under the existing circumstances there is no length which Ulster might go in resisting the measure which would not be justifiable and which he would not support. In other words, should the Home Rule bill be passed into law against their wishes the faction at present in control of the Unionist party profess that they are ready to support Ulster in raising rebellion and offering forcible resistance to its enforcement. Much was said early in the summer of collecting arms and drilling men. The natural result was disorder among the laborers of Belfast around July 12, when the Unionist workmen undertook to drive all Catholics and Nationalists out of their employment in the ship-yards. One of the largest firms in Belfast was obliged to suspend temporarily the operation of a large part of its plant on account of these disorders. The Unionist leaders, however, made haste to disavow these riots. The resistance they have in mind, they say, will be something more "dignified."

After many councils a program has been made public, which is to be carried into effect the latter part of September. Religious exercises are to be held on an appointed day, which all faithful Ulstermen are expected to attend. Later they are to sign a solemn league and covenant in imitation of their Scotch forefathers in the seventeenth century. The purport of this covenant is that the signers will not submit to a Dublin parliament, that they will not be bound by its laws, and that they will not pay any taxes it may impose. Instead, should the ministers persist in carrying their measure in spite of the covenanters, they propose to set up a provisional government in Ulster independent of the British parliament. Such a policy, if carried into execution, would obviously amount to treason. But its authors say that they have not yet rendered themselves liable to this charge, since this program is made contingent on the passage of the Home Rule bill.[2]

It is extremely unlikely that the majority of Unionists, who after all have little taste for lawbreaking and violence, will follow their leaders when the time comes to carry this program into effect. Only the event, however, will throw any certain light on that subject. In the meantime, since the wishes of Ulster are to become the basis of a proposed revolution, it is worth while to consider the political state of that province a little more carefully. Ulster, as is well known, is the wealthiest and most prosperous of the four provinces of Ireland. It contains the cities of Belfast and Londonderry and comprises the counties of Antrim, Armagh, Cavan, Derry, Donegal, Down, Fermanagh, Monaghan, and Tyrone. Of the 4,381,951 who lived in Ireland in 1911, 1,578,572 resided in the province of Ulster. Of the 696,375 voters in Ireland in the same year, 239,787 were residents of that province. Belfast, its largest city, is the seat of Ireland's chief manufacturing industries, and Ulster is, therefore, the wealthiest of the Irish provinces. Manifestly, if the inhabitants of Ulster were overwhelmingly opposed to Home Rule, to force that measure upon them would be a policy of doubtful wisdom. But such is not the case, and when Unionists use the term "Ulster" they do not really mean the entire province, but merely Belfast and its environs, particularly the counties of Antrim and Armagh. In the last general election[3] only 138,000 votes were cast in Ulster for the Unionist candidates as against 100,000 for those who favor Home Rule. Ulster sends thirty-one members to Parliament, of whom sixteen are Unionists, thirteen regular Nationalists, one an Independent Nationalist, and one a Liberal. Of the counties of Ulster, Armagh and Antrim (including Belfast) are overwhelmingly Unionist, though the Nationalists have one member from Belfast and one from Armagh. Cavan and Donegal, on the other hand, are overwhelmingly Nationalist, and none of their six seats was contested in the last election. All of the remaining counties are more evenly divided, in some the advocates and in others the opponents of Home Rule predominating. The county of Down might properly be added to Antrim and Armagh as constituting the Unionist strongholds, though in the last election three of its four seats were contested, and the Nationalists returned one member. The total population of the three Unionist counties is only 902,263, and by no means all of these, as we have seen, are opposed to Home Rule.

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[2] Since this paragraph was written the Ulster covenant has been published and signed. The document is milder in tone and less objectionable in content than the previous announcements of its proponents indicated it would be. The following is a copy of the covenant that was actually signed:

"Being convinced in our consciences that Home Rule would be disastrous to the material well-being of Ulster as well as the whole of Ireland, subversive of our civil and religious freedom, destructive of our citizenship, and perilous to the unity of the Empire, we, whose names are underwritten, men of Ulster, loyal subjects of his Gracious Majesty King George V., humbly relying on the God Whom our fathers in days of stress and trial confidently trusted, hereby pledge ourselves in Solemn Covenant throughout this our time of threatened calamity to stand by one another in defending, for ourselves and our children, our cherished position of equal citizenship in the United Kingdom, and in using all means which may be found necessary to defeat the present conspiracy to set up a Home Rule Parliament in Ireland; and, in the event of such a Parliament being forced upon us, we further solemnly and mutually pledge ourselves to refuse to recognise its authority. In sure confidence that God will defend the right, we hereto subscribe our names, and, further, we individually declare that we have not already signed this Covenant."

It is important to keep these facts in mind when considering the contention of the Unionists that the liability of Ulster to resist ought to have greater weight in determining the policy of England toward Ireland than the wishes of the remainder of the population. Unionists, as we have seen, not only justify these prejudices on the part of the population of Belfast, but they are also exerting themselves to stir up passions which certainly cannot tend to promote good feeling between the two contending parties in Ireland. Sir Edward Carson, a man prominent in Unionist councils but who has no official connection with Ulster, is to be the first signer of the proposed covenant. On the other hand these champions of Ulster deny that the demands of the remaining four-fifths of the Irish people should be heeded. Should the Nationalists resort to violence in case their plea for self-government is denied, an event by no means unlikely under the circumstances, the Unionist proposal is to use effective coercive measures. It seems scarcely believable that the responsible leaders of a great political party, acting apparently from sincere motives, should commit themselves to propositions so inconsistent and so illogical. The result is a situation the serious character of which everybody recognizes. The ministers offer to adopt any reasonable provisions for securing the interests of Ulster that its inhabitants may suggest. But the Ulstermen decline to consider such proposals and demand that the Home Rule bill be given up entirely. The only course open to Mr. Asquith and his colleagues, therefore, is to proceed with their measure, trusting that on this occasion as in 1829 and 1869, the loud talk of the partizans of Ulster will not be translated into deeds.

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[3] Where there was no contest I have counted the total vote in the constituency in favor of the party that returned the member, which ought to work out in favor of the Unionists since their members represent constituencies with a larger voting population than the Nationalists.

The present program of the government is to pass the Government of Ireland bill through its final stages in the House of Commons immediately after Parliament reassembles in October. The House of Lords, it is expected, will either disagree with it or ignore it. The result in either case will be a delay of two years by the end of which time the bill must have been passed twice more in practically its present form if it is to become a law. In case the bill shall pass through all these stages it is safe to assume that it will become a law, in spite of the hints of the revival of the royal veto that are heard now and then from the Unionist press. Should the present House of Commons survive its allotted time there is little doubt that Ireland will win her fight for national existence in the near future. In fact, the fight is won already, for no discriminating observer affects to believe that a majority of the British people are any longer hostile to the policy of Home Rule. Its adoption in some form seems to be only a matter of time.

Nevertheless, it does not require great powers of political discernment to see that the fate of the third Home Rule bill is as yet uncertain. Mr. Asquith's government has already carried such far-reaching measures as old age pensions, the budget of 1909, the parliament act, and national insurance. There are now pending in Parliament bills for disestablishing the church in Wales and for inaugurating a system of manhood suffrage. It is likely that in the next few months a scheme for taxing land values and for some sort of a reform of the land system will be brought forward. Each of these measures, however meritorious it may be, has inevitably alienated some of the supporters of the ministry. An administration that undertakes legislation of this stupendous character naturally has an uncertain future. It is not unlikely, therefore, that the Government of Ireland Bill of 1912 may meet the fate of its predecessors of 1886 and 1893. But there seems to be no present possibility that the bill itself will meet with any serious opposition from a majority of the British electorate.

THE MONROE DOCTRINE ABROAD IN 1823–24.[1]

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The chief purpose of this paper is to consider briefly the reception accorded President Monroe's message to congress of December 2, 1823, in England, France, Spain, and Austria.

This state paper was given a hearty welcome by many English journalists. Reports of the president's message first appeared in the newspapers of London on December 26 and 27, 1823. The *Times* happily contrasted it with "King's Speeches, addressed in like manner, but in substance far unlike, to Lords and Commons, to Peers and Deputies, in kingdoms nearer home. . . . As sources of intelligence—as indications of policy—as keys to national history, they have of late years dwindled to nothing, realizing with curious accuracy Talleyrand's definition of the use of language—'an instrument for concealing men's thoughts.' The genius of a popular Government rejects these mysterious devices. . . . The President's message of the United States is a paper breathing business in every line. It is at once a picture of the period elapsed since the labours of Congress were last interrupted, a prospectus for the forthcoming year, the detailed report of a commissioner, and the formal account of a trustee . . . we have read this State Paper with an interest more profound than any of its precursors had excited. The foreign relations of the United States are at this moment so deeply involved with those of Europe, of South America, and of England, that we turned impatiently to that division of the Message, and it well repaid us. There are two passages to which we shall especially direct the attention of the reader; one seems designed as a warning to

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[1] This paper was originally prepared for a joint session of the American Historical Association and the American Political Science Association at Buffalo on December 29, 1911, where it was read under the title of "Europe and Spanish America in 1822–1824."

Russia—the other to those Powers who meditate, or may attempt, an interference hostile to the freedom of South America or of Mexico." After quoting the clauses relating to Russia and to colonization in America, the *Times* said: "Now, this grave and somewhat novel doctrine, being connected by Mr. Monroe himself with the subject matter of the dispute with Russia, touching an occupation of the northwestern shore of North America, looks to us as if the Cabinet of Washington, had determined to carry its resistance to the famous ukase for monopolizing as well the ocean as the coast beyond the mere maritime branch of the controversy; and to exhibit some grounds of opposition to the establishment of Russian colonies on the shores of the northwest continent and of its adjacent islands. There is little doubt that if such be the design at Washington, full power exists to carry it into execution, let Russia act how she may."

The *Times* then considered "the point of more immediate urgency in this message, ... the undisguised exposition presented by it of the policy to be maintained by the United States in respect of South America." It noticed that Monroe disclaimed "every right or thought of meddling in the disputes of the European powers in matters 'relating to themselves.'" After quoting the clauses relating to the Holy Alliance and intervention in Spanish America, the *Times* interpreted them to mean that the United States would consider such a manifestation of an unfriendly disposition "as a *just cause of war*. This is plain speaking, and it is just thinking. If the free Government of Spain was so dangerous a neighbor to the Bourbons, that they could do no otherwise than put it down in self-defence, how can the jurists of legitimacy blame a kindred alternative on the part of a free power when threatened by the neighborhood of a despot? The President regards the distinct annunciation of this resolute policy so important, that he repeats it towards the close of his message. . . . The President does not fail to remark on the extreme ground of uneasiness afforded to independent States, by the avowed principle on which the invasion of Spain was excused. . . . As for Spain, she is dismissed with a brief allusion to her weakness, which makes it impossible for her to subdue the infant States. The above declarations, therefore, may be regarded as a friendly counsel to France and her continental Allies."[2]

Other English newspapers praised the message. The *Courier* of December 27 described that state paper as "a bold and manly notice to the Continental Powers," that the United States would treat interposition as "affording a just ground for war." It declared that, after "so clear and explicit a warning," there was not one of the continental powers that would "risk a war with the United States."[3] On January 19, 1824, the *Courier* declared that on great measures of mutual interest England and the United States understood "each other perfectly" and were "upon the best possible footing." It also noticed the non-colonization clause and suggested that this might give "considerable umbrage" to the Russian Government which coolly contemplated turning "the Pacific Ocean into a Russian lake."

In Parliament Mr. Brougham welcomed the tidings in these words: "The question . . . with regard to South America, he believed, was now disposed of, or nearly so; for an event had recently happened, than which no event had ever dispersed greater joy, exultation, and gratitude, over all the freemen in Europe—an event in which he, as an Englishman, connected by ties of blood and language with America, took peculiar pride and satisfaction—an event, he repeated, had happened, which was decisive on the subject; and that event was the speech and the message of the president of the United States to Congress. The line of policy which that speech disclosed became a great, a free, and an independent nation; and he hoped that his majesty's ministers would be prevented by no mean pride, no paltry jealousy, from following so noble and illustrious an example."[4] It became evident at once that all Englishmen did not understand the message alike. Apparently an interpretation to the effect that Spain had not the right "to recover her own colonial dominions" aroused the foreign minister, George Canning. He declared in the House of Commons that he was "clearly of opinion, with the President of the United States, that no foreign state had a right to interfere, pending the dispute between the colonies and the mother-country; but he was as strongly of opinion, that the mother-country had a right to attempt to recover her colonies if she thought proper."[5]

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[2] Rush heard that the British packet from New York had been instructed to wait for the messsage "and bring it over with all speed," Ford, W. C., John Quincy Adams, his Connection with the Monroe Doctrine, 68. No reports of the message were found in the London newspapers before December 26 27, and 1823. The quotation is from the *Times* of December 27.

[3] A longer quotation is found in McMaster, J. B., A History of the People of the United States, V, 48, note, where the date is erroneously given as December 24. Other interesting quotations from English newspapers are found, ibid., 48–50, note. A most favorable estimate of the influence of the message was given in a dispatch written by Rush to Adams, December 27, 1823, in which it was described as "the most decisive blow to all despotick interference with the new States. . . . On its publicity in London . . . the credit of all the Spanish American securities immediately rose, and the question of the final and complete safety of the new States from all European coercion, is now considered at rest." Ford, W. C., John Quincy Adams, his Connection with the Monroe Doctrine, 68.

Canning objected to that part of the message which he thought interdicted "all further colonization on the Continents of America." He asked Rush to explain its meaning.[6] The latter evidently stated that this paragraph was aimed at Russia.[7] The English minister then said that England could not "acknowledge the right of any power to proclaim such a principle, much less to bind other countries to the observance of it. If we were to be repelled from the shores of America, it would not matter to us whether that repulsion were effected by the Ukase of Russia excluding us from the sea; or by the new Doctrine of the President prohibiting us from the land. But we cannot yield obedience to either."[8] Canning objected particularly to the prohibition of colonization by England on the north-west coast of North America; hence Monroe's pronunciamento soon became a factor in the dispute of England and the United States with Russia over conflicting claims to the north-west coast.[9] It hindered concert of action between the United States and England.[10] Canning even ventured the prediction that England would "have a squabble with the Yankees yet in and about those regions."[11]

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[4] In an address on the king's speech, February 3, 1824, Hansard, T. C., Parliamentary Debates, new series, X, 68.

[5] Hansard, T. C., Parliamentary Debates, X, 74. See also, ibid., 90, 91, 92; Bagot, J., George Canning and his Friends, II, 208. The views of Sir James Mackintosh are also quoted in Moore, J. B., A Digest of International Law, VI, 411.

[6] Bagot, J., George Canning and his Friends, II, 209; Rush, R., Memoranda of a Residence at the Court of London (Philadelphia, 1845), 471, 472.

[7] Bagot, J., George Canning and his Friends, II, 217.

[8] Reddaway, W. F., The Monroe Doctrine (New York, 1905), 92, 93.

The great English minister was evidently chagrined at Monroe's bold assumption of Pan-American leadership. Canning, as a monarchist, believed that the bustling young republic wished to separate democratic America from monarchical Europe; hence, while disclaiming all thoughts of forcible intervention by England,[12] he soon desired, as a counterpoise, to encourage the establishment of monarchies in Latin America. "I have no objection," said Canning, "to monarchy in Mexico—quite otherwise . . . even in the person of a Spanish infanta. . . . Monarchy in Mexico, and monarchy in Brazil would cure the evils of universal democracy . . . "[13] Thus it is hardly an exaggeration to say that the original doctrine of Monroe at times provoked antagonism to the spread of democratic governments in America.

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[9] Rush, R., Memoranda of a Residence, 597, 598. On February 25, 1824 (O. S.), Henry Middleton, minister of the United States at St. Petersburg, wrote to Adams: "I have reason to believe, too, that insinuations were not wanting to put the most unfavorable construction upon the doctrine we had advanced, and to make it appear as peculiarly directed against Russia. I have been at considerable pains in endeavoring to efface all impressions of that kind, and I let it be distinctly understood, that I should protest in the strongest terms against any delimitation of territory without the participation of the United States. . . . It may be very well understood that a course different from that we are pursuing with regard to Spanish affairs would have pleased better . . . " State Dept. MSS., Bureau of Indexes and Archives, Despatches from Russia, 10. On February 5/17, 1824, Middleton wrote to Adams in regard to intervention in Spanish America: "The decided tone of the President's Message at the meeting of Congress (which was received here with unprecedented rapidity, having reached St. Petersburg (in the English Gazettes of the 26th December) on the first of January O. S.) is considered generally as having gone far towards deciding the question against interference." Ibid.

[10] American State Papers, Foreign Relations, V, 460, 461, 463; Bagot, J., George Canning and his Friends, II, 218, 219.

[11] Ibid., 266.

[12] Ibid., 237; Paxson, F. L., The Independence of the South-American Republics, 213.

[13] Stapleton, A. G., George Canning and his Times, 394, 395.

The ministers of Louis XVIII evidently read Monroe's message "with the deepest interest."[14] To the minister of foreign affairs, Viscount Châteaubriand, the principle of non-colonization and the principle of non-intervention were alike distasteful. Châteaubriand even suggested to Sir Charles Stuart, the English ambassador at Paris, "a joint representation to the United States" against "the prohibition of future colonization on the Continents of America."[15] On January 2, 1824, Châteaubriand said to Stuart "that the striking coincidence of the language of the Message to Congress with the communications between His Majesty's Government and the Prince de Polignac, respecting the affairs of the Colonies, almost justified in his mind the supposition that these doctrines were now set forth for the first time by the President, in virtue of an understanding between the British and American Governments." Châteaubriand "thought that a declaration of the principles, upon which the President affects to pronounce that the whole of the New World shall in future be governed, made at a time when the American Government is wholly unable to enforce such pretensions, ought to be resisted by all the Powers possessing either territorial, or commercial, interests in that Hemisphere, and more especially by Great Britain and France, inasmuch as it strikes at the principle of Mediation brought forward by Them both, by peremptorily deciding the question of South American Independence, without listening to the concessions which either of the parties at issue might be disposed to admit. Monsieur de Châteaubriand added that under these circumstances he felt the more confirmed in his opinion, that it will not be expedient to allow a Representative of the United States to participate in any negotiations, which may take place upon the affairs of the Colonies."[16] At a subsequent conference Châteaubriand gave Stuart the impression that he had discarded the notion that England had connived at Monroe's declarations in regard to South America.[17]

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[14] Stuart to Canning, January 1, 1824, Public Record Office, Foreign Office Correspondence, France, 305.

[15] Stuart to Canning, January 13, 1824, ibid. See also Rush, R., Memoranda of a Residence, 486, 487.

Conferences in regard to Spanish America were also held between Châteaubriand and the Duke of San Carlos, Spain's ambassador in Paris. On February 12, 1824, San Carlos reported to the new Spanish secretary of state, the Count of Ofalia, a conference in which Châteaubriand had stated that France wished Spain to decree the freedom of commerce in Spanish America and thus to weaken England's position. San Carlos intimated that the Allies feared that intervention in Spanish America would provoke a war because of the opposition of England.[18] Monroe's message, interpreted to signify a *rapprochement* between England and the United States, evidently had some influence. On February 17, Châteaubriand wrote to the French ambassador at Berlin that both Canning and Monroe had declared that they denied to the continental powers the right of intervention by force of arms in the affairs of the Spanish colonies.[19] This declaration was interpreted by Châteaubriand to mean that, if the Allies intervened in Spanish America, they would have to fight England and perhaps the United States also.[20] Châteaubriand's analysis of European

[16] Stuart to Canning, January 2, 1824, Public Record Office, Foreign Office Correspondence, France, 305, see also Reddaway, W. F., The Monroe Doctrine, 94.

[17] Stuart to Canning, January 13, 1824, Public Record Office, Foreign Office Correspondence, France, 305.

[18] Archivo Histórico Nacional, Estado, 6852. In October, 1823, Canning had boldly announced to the French ambassador in London, Prince Polignac, his unflinching opposition to intervention by force in Spanish America, British Foreign and State Papers, 1, 49–53; San Carlos to Saez, November 8, 1823, reported a conference with Châteaubriand in which the latter had told him that the news of Canning's attitude had been sent to the ambassadors of France in Austria, Prussia, Russia, and Spain, Archivo General de Indias, Estado, América en General, 5; see also Bagot, J., George Canning and his Friends, II, 208, 209.

[19] Oeuvres Complètes de Châteaubriand, XII, 419. See further, Bagot, J., George Canning and his Friends, II, 207. An American's view of the influence of Monroe's message in France is found in Hamilton, S. M., Writings of James Monroe, VI, 432–434.

[20] Oeuvres Complètes de Châteaubriand, XII, 419, 426.

politics convinced him that, in such a contingency, France would not get enough support from the Allies to justify a disastrous war: the Holy Alliance would be reduced to France and Russia.[21] The hope of promoting commerce with the Spanish colonies, a desire to retard the recognition of Spanish-American independence by England, and a fear of the English navy were among the motives which governed Châteaubriand.[22] More reluctant to intervene than the foreign minister was the premier, Count Villèle. In vain did the Czar intimate that the Allies should repress the revolt in Spanish America.[23] France did not advocate forcible intervention in Spanish America in the spring and summer of 1824.

The reports of Monroe's message and of its reception in England created a stir in the newspapers of Paris. The chief critic of Monroe was the administration journal, *L'Etoile*; his eloquent champion was *Le Constitutionnel.* On January 1, 1824, *L'Etoile* discussed the message under the headline "Mélanges Politiques." *L'Etoile* said that, according to the excerpts printed in the English newspapers, the message contained "evident contradictions." It affirmed that there was no design in Europe to oppress the Spanish colonists, but rather to release them, like their Spanish brothers, from "the yoke of ambitious and covetous revolutionists." Evidently it particularly objected to the passage concerning the governments *de facto*. "Such a maxim would shake the political system of all Europe and might even expose those professing it to terrible consequences. Suppose indeed that tomorrow an audacious soldier should seize the supreme power in the United States; or that, breaking the bonds of this gigantic federal republic several states should proclaim their independence, what principle would congress then invoke to protest against usurpation or dismemberment?" The complaints of the United States could be answered by their own words: "the usurper rules *de facto*; your former states have ceased *de facto* to belong to you." On January 4, *L'Etoile* also criticized Monroe. It said that Monroe, "who was not a sovereign," but only "the first delegate of the people" had assumed "the tone of a powerful monarch whose armies and fleets were ready to move at the first signal. He has done even more, for he has prescribed to the potentates of Europe the conduct which they ought to observe under certain circumstances if they do not wish to provoke his displeasure." After mentioning the non-colonization clause, it declared: "Mr. Monroe is the temporary president of a republic situated on the eastern coast of North America. That republic is bounded on the south by the possessions of the king of Spain and on the north by the possessions of the king of England. The independence of this republic has been recognized for only forty years. On what title then are the Two Americas from Hudson's Bay to Cape Horn now under its immediate control?" The attitude assumed by Monroe was described as that of "a dictator armed with a right of sovereignty over all of the New World." The message was interpreted to mean that, under Monroe's "political system," Spain could not attempt to reconquer her colonial dominions; the king of Portugal could not freely act as a sovereign and as a father in the empire of Brazil; England could not freely plant new settlements in Canada or New Scotland. Moreover, the message contained "phrases indirectly hostile to the politics and to the ambitions of the great powers of Europe." Lastly, the doctrines of the message were not sanctioned by any authority of the United States; "the opinions of Monroe were as yet only those of a private citizen."

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[21] Ibid., 419, 426, 427.

[22] Ibid., 379, 408, 411, 414, 426; San Carlos wrote to Ofalia, March 25, 1824, that Châteaubriand advised Spain not to exasperate England and thus accelerate the recognition of Spanish America, Archivo General de Indias, Estado, América en General, 5. On the influence of the sea powers see Chadwick, F. E., The Relations of the United States and Spain, Diplomacy, 204.

[23] Martens, F. de, Traités conclus par la Russie, XV, 30.

On January 4 *Le Courrier Française* advised "*L'Etoile*, its party, and all the host of fanatics of Europe . . . to restrain the ridiculous manifestations of their wrath." On January 6, the *Times* made a spirited defence of Monroe: "The French Ultra journals are much perplexed by the message of the President to Congress, and by the favorable reception which (except in one or two contemptible cases) that bold state paper has experienced from the English press. The editors of the *Etoile* manifestly shake in their skins, and writhe under the lash thus inflicted on the plots of their masters against human freedom." The *Times* declared that *L'Etoile* was attempting "to sever the Chief Magistrate of a powerful and enlightened nation, from the body of the state which he represents. 'Not a Sovereign!' No, but he is the acknowledged—the elected head and organ of a great sovereign people—one whose election cost his country neither a drop of blood nor a widow's tear, nor the beggary or banishment, the persecution or corruption of a single human being among ten millions of men."

Le Constitutionnel of January 2 defended the message in a remarkable exposition. It declared that the message expressed justice "with simplicity and grandeur." The "wise Monroe" had firmly traced "the limits of the New World. . . . There one reads all that we ceaselessly repeat; there one sees put into practice all the principles which we proclaim; one is impressed with the serenity and the universal good-will which it breathes. To-day for the first time the new continent says to the old 'I am no longer land for occupation; here men are masters of the soil which they occupy, the equals of the people from whom they came, and resolved not to treat with them except on the basis of the most exact justice.' The new continent is right." This journal believed the great principle of the message to be that the Americas were no longer open to colonization: "America has legitimate possessors from the Pole to Cape Horn." This principle was interpreted to mean that Monroe recognized the right of European nations to colonies in America while the settlers were under the tutelage of the mother-country. But when the colonists became mature and exercised their rights and powers they became members of the "new American family." The declarations of Monroe in regard to the governments *de facto* were interpreted to mean that, if a colony warred with the mother-country, the older American states would not intervene until the rising state had demonstrated by force its right to emancipation. But if the European continent, "proud of its former supremacy," proposed to take up arms against a colony, then American neutrality would cease, the struggle would no longer be "the cause of the mother-country with a colony, it would be the quarrel of a continent with a continent; the United States would see their independence compromised and they could not remain peaceable spectators of such subversion of all rights. The anti-revolutionary system has traversed all Europe, it has broken down the Alps and the Pyrenees in the two peninsulas, it has touched the columns of Hercules, and it now needs only to cross the ocean to accomplish the reconstruction of the past and to revoke all enfranchisements; but the freedmen are members of a nation and they declare to Old Europe that she shall not cross the sea to replace the yoke of former domination. The oldest sons declare that they join their younger brothers, and, if anyone wishes to attack them, they announce that the United States will oppose it, because they are all brothers with a common origin and with the same cause."

The non-colonization principle *per se* was hardly given as much attention in the newspapers of Paris as in those of London. On January 24, 1824, the *Journal des Débats* printed a letter which discussed the conflicting claims to the north-west coast of America and the message of Monroe. The *Journal* merely called the attention of its readers to the rights of Spain.

Monroe's message reached Spain in January, 1824, when the reactionary policy of the absolute king, Ferdinand VII, was approaching a climax in the terrible days of Calomarde. The clauses of the message which dealt with Spanish America naturally attracted the attention of a few officials of the government. The Spanish consul at Gibraltar interpreted the news, which he gleaned from American newspapers, to mean that the United States would object even to the interference of Spain with the states whose independence they had acknowledged.[24] Letters to Madrid from the Spanish consul at New York, Francisco Stoughton, in which he described the message as "a political maneuvre to check European powers and to flatter the vanity of the American people," were quietly filed with the documents concerning the pacification of America.[25] Stoughton's letter of December 16, 1823, however, which contained an editorial on the message from the *National Gazette*, that the consul deemed inspired, bears this comment, evidently written by an official in the Spanish department of state: "Add this letter to the papers concerning the negotiations which are being carried on in regard to America. Send an accurate translation of the annexed article to the ministers of his Catholic Majesty at the courts of the Allies so that they may know the scope of the views of the government of the United States in regard to the affairs of America which is in opposition not to the views of Spain in particular, but to those of Europe."[26]

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[24] J. G. de Rivas to the Marquis of Casa Yrujo, January 5, 1824, Archivo Histórico Nacional, Estado, 5625.

Hugh Nelson, the minister of the United States in Spain, described the reception of Monroe's message at the court of Madrid in a despatch of January 16, 1824:

"The Message of the President of the United States reach'd us thro' France a few days since: at first, in extracts, publish'd in the French Papers—and afterwards in the entire form published in Gallignani's Messenger. It appears, from what we learn, to have excited surprise, and indeed astonishment in many of the Diplomatic Corps. But they speak yet in the most cautious and guarded manner. It was remarked by one of them to Mr. Appleton, that it had given the death blow to the proposed Congress at Paris for adjusting South American Affairs. Since the arrival of the extracts from the Message in the French papers, Mr. A— has also had an interview with one in the secrets of the great Northern Power, who spoke of it in the most guarded manner—but complimented the astuteness and sagacity of the President, as manifested in this State Paper. Of its effects on this Govt. we hear nothing. I attended yesterday at the King's Levee with the other Foreign Ministers, but I found the deportment of the Monarch and the Royal family in perfect harmony with their former behaviour—precisely as if no such State paper existed—and as if they had no knowledge of it. After the Levee was over, I waited upon the Count of Ofalia (Narcisso Heredia) still exercising *ad interim* the functions of First Minister of State, who received me with the complacency, which he always manifests in my visits—and as usual spoke of our Country, the persons and things in it with apparent pleasure. I waited some time expecting that he would touch upon the subject of the Message—but he said nothing of it—Nor did I think proper to introduce it as a subject of conversation."[27]

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[25] Stoughton wrote letters in regard to Monroe's message to the Marquis of Casa Yrujo on December 4 and December 6, 1823, and January 2, 1824; the quotation is from the letter of January 2, Archivo General de Indias, Estado, América en General, 5.

[26] Ibid.

Nevertheless, Ofalia was spurred on by the news, for on January 17, 1824, he instructed San Carlos to undertake a special mission to London where he was to use his influence against the recognition of Spanish-American independence by England.[28] This mission was suspended, however, when England declined Spain's invitation to attend a European congress on the affairs of Spanish America.[29] But Ferdinand did not falter in his determination to plant the banner of Castile on the summit of Chapultepec. Shortly after Monroe's message reached Madrid, the king recalled the envoys commissioned by the constitutional government to pacify the insurgent provinces from Mexico to Patagonia. The actions of these commissioners, some of whom had actually signed a preliminary treaty of peace with the insurgents of Buenos Aires, were declared null.[30] To Ferdinand, who wished to be in fact the king of Spain and the

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[27] Nelson to Adams, January 16, 1824, State Department MSS., Bureau of Indexes and Archives, Despatches from Ministers, Spain, 23. Mr. Appleton had been acting as Chargé d'Affaires *ad interim* for the United States before the arrival of Nelson at Madrid.

[28] Archivo Histórico Nacional, Estado, 6852.

[29] Ofalia to the Duke of San Carlos, February 23, 1824, ibid. England's reply is in the British and Foreign State Papers, XI, 58–63. In December, 1823, Ferdinand VII had issued an invitation to the Allies and to England to attend this congress, ibid., 49–53.

[30] British and Foreign State Papers, XI, 865. The treaty with Buenos Aires is found in Registro Oficial de la República Argentina, II, 41, 42.

Indies, Monroe's manifesto was not a flaming sword at the gateway to the New World.

In Austria prominent publicists were startled by the news from America. On January 13, 1824, the Austrian councillor of state, Friedrich von Gentz, was moved to write this instructive comment: "The message of the President of the United States is an epoch-making act in the history of our times. Every line of it deserves to be considered with the most earnest attention. Not only the present attitude of that mighty and productive federation towards Europe, but also the relation of both American continents to the Old World are here enunciated with a clarity and a precision which end all doubts and duplicities.

"The separation of America from Europe has been completed irrevocably. If the reconquest of the colonies on the continent or their voluntary return to the old rule had not already become impossible, this opposition of the North American people, which has so long been developed and which has only now been openly declared would alone be sufficient to banish all thoughts of it. At present it is not a question of the islands; the United States themselves feel that they dare not as yet carry their presumption so far; and very probably they foresee that the rule of the European countries over Cuba, Jamaica, Martinique, and other islands will not last much longer without their assistance.

"May this view of the affair which has now been revealed to us, early incite great statesmen to consider carefully and profoundly what must be done with that new transatlantic colossus which was formed from such dangerous, hostile elements, not so much because of the material safety of Europe (for this cannot be menaced from that quarter for the next fifty or one hundred years) as for the moral and political preservation of the Old World upon its present basis. . . .

"With regard to the policy of the cabinets in the questions pending, it seems to me a real gain that the conviction of the impossibility of working on the American continent with the idea of re-establishing the old régime has been so emphatically confirmed by the North-American protestations." Gentz maintained that the European courts in considering Spain's relations to her former colonies should recognize the fact that "nothing positive may henceforth be attempted on the American continent by European powers—that Spain herself is in no condition to subjugate anew any of the colonies—and, that, in the present situation, after a deliberate examination of the inevitable results of the undertaking, no other power will venture to co-operate—that the titular sovereignty over these colonies can never be used by Spain for any real gain."[31]

The English ambassador at Vienna thus described the comment of Prince Metternich: "He said, that it was in exact conformity with the republican Principles, avowed and constantly acted upon by that Government, but that the opinions and intentions therein announced afforded additional grounds for not allowing an Agent from the United States to assist at Conferences which would have for their object the re-establishing by amicable means, some kind of connection between Spain and her Colonies.

"This Speech, he said, had confirmed him in an opinion he had before entertained, that great calamities would be brought upon Europe by the establishment of these vast republics in the New World, in addition to the power of the United States, of whose views no man could entertain a doubt after reading the Speech in question. He did not say that the present race would witness these calamities, but it was one of the first duties of a Government to direct its views to the welfare of Posterity, and however remote the danger which he apprehended might be, it was still the duty of every European Statesman to give it due consideration in forming his judgment upon this most important Question.

"He held it, he said, to be impossible that any of the European powers could be of opinion, (their commercial interests being secured) that the independence of America could be desirable, although circumstances might compel them to acquiesce in it.

"He condemned as usual, the folly of the Spanish Government in cherishing the hope of being enabled to re-establish their former ascendancy over the Colonies, but he could not but think that it would be highly advantageous to Europe, if, (what he called), '*Le principe Monarchique*' could be preserved, by vesting in his Catholic Majesty a nominal authority over those possessions, or by constituting them independent Monarchies in the persons of Individuals of the Spanish Royal Family."[32]

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[31] Ungedruckte Denkschriften, Tagebücher und Briefe von Friedrich von Gentz, 102–105.

Metternich was not the only publicist who still thought of influencing the destinies of the states rising beyond the Atlantic. About the same time, his friend Gentz also dreamed that a congress of the Allies might appropriately consider an adjustment of the relations between independent Spanish America and the mother-country.[33] A few months later Ferdinand VII—evidently hoping to regain his glorious heritage—again vainly solicited England to attend a congress on Spanish-American affairs.[34] Of this invitation Canning said: "The voice is the voice of Ofalia, but the hand is the hand of Pozzo. . . . "[35] Russia was the Don Quixote of the Holy Alliance; the Czar could not persuade even France to support forcible intervention in Spanish America.[36] France now leaned towards England, for the new foreign minister, Count Villèle, soon corresponded with Canning in regard to monarchies in Spanish America.[37] When

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[32] Sir Henry Wellesley to Canning, January 21, 1824, Public Record Office, Foreign Office Correspondence, Austria, 182. Metternich's views on Monroe's message are merely suggested in Aus Metternich's Nachgelassenen Papieren, II, part 2, 90.

[33] Ungedruckte Denkschriften, Tagebücher und Briefe von Friedrich von Gentz, 105–112.

[34] British and Foreign State Papers, XII, 958–962. On June 14, 1824, Sir William A' Court sent to Ofalia a copy of Canning's note of May 17, 1824, in which England again declined to attend a congress on Spanish-American affairs, Archivo General de Indias, Estado, América en General, 5.

[35] Bagot, J., George Canning and his Friends, II, 240. Russia had sent her ambassador Pozzo di Borgo from Paris to Madrid on an extraordinary mission.

[36] San Carlos to Ofalia, April 20, 1824, reported conferences with the ministers of the Allies in Paris in regard to Spanish America. San Carlos stated that Russia wished to know Spain's plans, Archivo Histórico Nacional, Estado, 6852. On the relations of France and Russia at this time see Martens, F. de, Traités conclus par la Russie, XV, 30–33.

[37] Stapleton, E. J., Some Official Correspondence of George Canning, 1, 247, 248. Châteaubriand's plea to Canning in January, 1824, is found ibid., 139–144.

Canning won the fight in his cabinet for the recognition of Spanish-American independence—an act which he fondly hoped would make Spanish America "English,"[38] and thus thwart the ambitions of the Republic of the West—he gave an intimate friend this exposé of his new American policy:

"The thing is done. . . . The Yankees will shout in triumph; but it is they who lose most by our decision. The great danger of the time—a danger which the policy of the European System would have fostered—was a division of the World into European and American, Republican and Monarchical; a league of worn-out Govts. on the one hand, and of youthful and stirring Nations, with the U. States at their head, on the other. *We* slip in between; and plant ourselves in Mexico. The Un. States have gotten the start of us in vain; and we link once more America to Europe."[39]

The fortunes of Spanish America at this conjuncture were thus affected by various events: American, European, national, international. The rumor of armed intervention in Spanish America which reached statesmen of the New World was not entirely a hoax. The principle of non-intervention announced in Monroe's response was praised by many European journalists, while Canning and Châteaubriand protested against the principle of non-colonization. One or the other of these principles provoked the criticism of certain statesmen and editors at once. No contemporary suggestion has been found for the familiar name, "the Monroe Doctrine": it was called a "line of policy," a "doctrine"; Canning christened it "the new Doctrine of the President." Although this doctrine cooled the ardor of some advocates of an Hispanic congress, yet it did not banish from European minds all thoughts of interference under the sunny sky of South America. Even in its primitive form, the doctrine of Monroe suggested perplexing problems of interpretation to European journalists and publicists. In the opinion of the writer, some historians have misunderstood or have overemphasized the contemporaneous influence of Monroe's message. For example, that declaration of policy did not necessarily influence in favor of the United States the negotiations pending in regard to the north-west coast of North America. Further, that declaration was only one of the forces which affected the new American family of states for good or evil. The influence which that pronunciamento exerted in favor of the autonomy of Spanish America in 1823 and 1824 often acted in common with other influences. It was affected by the growing consciousness that this magnificent empire had split into states which had virtually established their independence; naturally it was linked to the recognition of Spanish American independence by the United States; it could hardly be dissociated from the pervasive influence of England, which sprang from the "dear-bought glories of Trafalgar's day." America's *Zeitgeist* even awoke a spirit of apprehension or of antagonism in Europe: some publicists now conceived the United States to be a new weight cast into the scales of European politics; prominent statesmen had visions of menacing democracies in America, the New World ranged against the Old. Metternich and Canning even thought of encouraging monarchies in Latin America. This policy—which Canning hoped would prevent the hegemony of the United States in America—indicates the difficulty of drawing a demarcation line between Europe and America in an era distinguished by inter-hemispherical influences. While the doctrine announced by President Monroe under the particular circumstances which called forth its utterance was one of many influences acting for the autonomy of Spanish America, the notion that it was a dominant influence acting favorably to the destinies of the Hispanic states in America is erroneous.

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[38] Stapleton, A. G., George Canning and his Times, 411.

[39] Canning to Frere, January 8, 1825, in Festing, G., John Hookham Frere and his Friends, 267, 268. On "The Later American Policy of George Canning," see Temperley, H. W. V., in the American Historical Review, XI, 779–797.

NOTES ON CURRENT LEGISLATION.

EDITED BY HORACE E. FLACK.

The Government of Ireland (Home Rule) Bill. The Liberal government are pushing through Parliament at this session several measures of first-rate importance. The Unionists complain, indeed, that the program is altogether too ambitious for a single session; and the general indifference of the country, in the face of impending constitutional changes of the highest moment, would seem to indicate that popular interest has been palled by a surfeit of radical measures. Time not sufficing in the regular session, even with the expeditious method of "closure by compartments," to accomplish the passage through the House of Commons of the bills which the Government has introduced, a special autumn session has become necessary and, after adjourning on August 7, Parliament reconvened October 7, and will sit until shortly before Christmas. The three chief measures, all involving constitutional changes of primary importance, which are occupying the attention of the House of Commons are the Government of Ireland bill, the Welsh Church Disestablishment bill, and the Franchise and Registration bill. This note is devoted to a discussion of the first of these.

The third Home Rule bill was introduced into the House of Commons by the prime minister on April 11, in a long and able speech in which he outlined clearly the content and effect of its several clauses. A study of the provisions of this important measure naturally suggests comparison with the Gladstonian Home Rule bills of 1886 and 1893, and with the ill-fated Irish Council bill of 1907.

The first Home Rule bill (though Mr. Gladstone never admitted this) would have virtually repealed the Act of Union and have re-established the status existing in the eighteenth century. A Legislature consisting of two "orders" was to be set up in Dublin,—the one to consist of 28 representative peers together with 75 elected members chosen under a high pecuniary qualification; the other to be made up of the 103 existing members of Parliament, re-enforced by 101 others chosen by all the Irish constituencies except Trinity College. The two orders were to sit together, but either could demand separate voting on any measure, when the concurrence of both was necessary for its passage. An independent Irish Executive, subject of course to the Crown, but responsible to the Irish Legislature, was to be established. Ireland was to be left totally unrepresented in Parliament at Westminster. Imperial questions, those relating to the Crown, the army, the navy, foreign and colonial affairs, trade and navigation, the Post Office, coinage, weights and measures, and copyrights were not to come within the competence of the Irish Legislature, and the Customs Union with Great Britain was to be maintained. The Protestant minority was to be safeguarded by forbidding the establishment or endowment of any religious denomination. For two years the control of the constabulary was to be controlled by the Imperial Parliament, after which it was to pass over to the Irish Legislature. Ireland was to contribute from one-twelfth to one-fifteenth of the cost of imperial burdens, instead of two-seventeenths as had been arranged at the Union. To secure this the imperial government retained the control over customs and excise duties. In all other respects the Irish Legislature was made absolutely independent and was given a completely free hand. This bill was defeated in the House of Commons by the secession of the Liberal Unionists.

The second Home Rule bill, which passed the House of Commons but was rejected by the House of Lords in 1893, provided for an independent bicameral Irish Parliament. Both chambers were to be elective, but by different constituencies. Only those rated at £20 could vote for members of the Legislative Council, a body of 48 members, while the Legislative Assembly, 103 in number, was to be elected by the existing constituencies. If the two houses disagreed on important questions they could be summoned to meet in joint session and the decision reached by this body was final. An appeal to the Privy Council could be taken against any act of the Irish Parliament which overstepped its constitutional rights. The Irish Executive was to consist of a Viceroy appointed for six years, irrespective of religion or party, and an executive committee of the Irish Privy Council which was to act as his cabinet. The Viceroy was to have a veto on all Irish bills, subject to the sanction of the sovereign and the advice of his cabinet. The financial arrangements of the first bill were modified, and for the payment of a definite lump sum by Ireland, which bore to some minds the aspect of a tribute, was to be substituted a quota of between four and five per cent of the whole revenues of the three kingdoms. The most significant difference from the first bill was found in the provision that Ireland was to continue to be represented in the Parliament of Great Britain by 80 members, who should, however, participate in its deliberations only when imperial or Irish questions were under consideration.

The Irish Council bill, which was introduced by Mr. Birrell on May 7, 1907, did not embody an attempt to establish legislative home rule for Ireland. Its purpose was far less ambitious, being confined to a scheme of administrative "devolution." The powers of the House of Commons were left untouched and no legislative or taxing powers were conferred by the bill. Eight of the most important of the forty-five boards and departments of the administration in Ireland, viz., the Local Government Board, the Department of Agriculture and Technical Instruction, the Congested Districts Board, the Commissioners of Public Works, the Commissioners of National Education, the Intermediate Education Board, the Reformatory and Industrial Schools Department, and the Registrar General's Office, were to be put under the control of a central Representative Council, consisting of 82 elected and 24 nominated members. The Irish Chief Secretary was to be admitted to its deliberations but not given a vote. The elected members were to be chosen by the voters on the Local Government register. The nominated members were to be appointed in first instance by the Crown, afterward by the Lord Lieutenant. Complete control over the administration of the eight departments was accorded to this Council, but the Lord Lieutenant should retain a certain power of reserving any resolution which it might pass. The bill also provided for a special Irish fund, and looked toward the establishment, by order in council, of a separate Irish Treasury. To the Council was to be handed over the moneys now spent by the eight departments, and also a sum of £650,000 a year, a part of which was to be expended on public works. After passing the first reading in the House of Commons by a vote of 416 to 121, the bill was dropped by the Government on the unmistakable indications of dissatisfaction and disapproval by the great mass of the Irish people.

The bill which the House of Commons is at present considering reverts to the principle of thorough-going home rule. It consists of four parts dealing with the Legislative Power, the Executive, Finance, and the position of Ireland in the Imperial Parliament. It is stated as the purpose of the bill to confer real autonomy upon Ireland in regard to Irish concerns. To this end a Parliament is created, consisting of the King and two houses, the Irish Senate and the

Irish House of Commons. This Parliament is to make laws for the peace, order and good government of Ireland. The Senate is to consist of 40 members who are to hold office for eight years and retire by rotation. In first instance they are to be appointed by the Imperial Executive, but after the system is in operation this important function is to be vested in the Irish Executive. The lower house is to be made up of 164 members elected by the existing Irish constituencies, which means that some will return as many as four or five members. Under this arrangement Ulster will have 59 members, Leinster 41, Munster 37, Connaught 25, and the Universities two. Provision is made for the settlement of disagreements between the two houses by a joint session where they will deliberate and vote as one body. Besides the services which were reserved to imperial control by the second Home Rule bill, the fields covered by the Irish Land Purchase Acts, the Old Age Pension Act, and the Insurance Act (1911) are to remain under the control of the Imperial Parliament, as are also the Royal Irish Constabulary, the Postal Savings Banks, public loans so far as such loans were made in Ireland before the passage of the act, and the collecting of taxes. In regard to some of these services, however, there is provision made for a transfer, either automatically or at the option of the Irish Parliament, to Irish control. Except in some purely subsidiary matters the Irish Parliament is denied the power to either amend or repeal the Irish Government Act itself; and the right of appeal to the Judiciary Committee of the Privy Council in all cases where the validity of the laws passed by the Irish Parliament is brought in question is definitely preserved. Special provisions are made for the protection and preservation of religious equality. Finally, additional safeguards against the Irish Parliament exceeding its constitutional authority are supplied by the veto which is vested in the Lord Lieutenant, and the over-riding force of imperial legislation.

It is provided in the first clause of the bill that the supreme power and authority of the Imperial Parliament shall remain unaffected. Whether this will in fact mean anything more than the theoretical supremacy which the British Parliament retains over the Legislatures of all the self-governing colonies remains to be seen. The Government affirms, and Mr. Redmond, speaking for the Irish Nationalists concedes, that the effective supremacy of Westminster is to be preserved; that over the Irish Parliament there will always loom large and threatening the power of the Imperial Parliament to nullify

Irish legislation which may be out of accord with the general interests of the Empire. The Unionists are sceptical. They believe that, with the principle of ministerial responsibility to the Irish Parliament firmly established, it will be virtually impossible for the British Parliament to exercise any really effective control. Should the attempt be made, the Irish ministry would at once resign. No other ministry could presumably be secured which would possess the confidence of the Irish Legislature, and the imperial government would confront the alternative necessity of either receding from its position or carrying through its policy by force, with the whole system of Irish self-government in abeyance. There are some very interesting precedents in the colonies which go far to support this view. Except as a legal fiction, the Opposition asserts, this clause is a nullity. The relation of Ireland under the act will inevitably be the same as that of Canada and Australia.

The clauses upon the Executive provide that the Lord Lieutenant shall hold office for a fixed term of years, and that the religious qualification shall no longer be enforced. He shall be advised in all Irish concerns by an Irish Executive, or Cabinet, whose competence shall be co-extensive with that of the Legislature.

The financial clauses of the bill have proved the most troublesome. The Government did not adopt the scheme outlined in the report of the Committee on Irish Finance. An independent Irish exchequer and an Irish consolidated fund under the control of an Auditor General are to be established. There is also to be a body to adjust the accounts between the two exchequers, known as the Joint Exchequer Board, to consist of five persons, two to be appointed by the imperial government, two by the Irish Cabinet, and the chairman to be nominated by the Crown. The collection of all taxes and revenues, whether imperial or Irish, except those of the Post Office, is to remain in the hands of the imperial government, and the proceeds are to be covered into the imperial exchequer. The Irish government is to pay the cost of all branches of the Irish administration except the reserved services. For this purpose there will be transferred every year from the Imperial exchequer to the Irish exchequer a certain sum to be determined by the Joint Exchequer Board as sufficient to cover the cost of the Irish services under Irish administration, except the Post Office, whose revenues are collected by the Irish government and go directly into the Irish exchequer. Furthermore, a sum of £500,000 a year, to be eventually reduced to £200,000, will be given by the imperial exchequer to establish the new administration. The taxes in Ireland may be reduced or abolished by the Irish Legislature, with the result that the "transferred sum" will be correspondingly cut down. New taxes (with certain exceptions including the customs but not the excise) may be laid by the Irish Legislature. These must, however, be collected by the imperial government, a corresponding increase accruing to the "transferred sum." When at any future time the Irish revenue exceeds the cost of Irish administration an adjustment of the financial relations between the two countries may take place through action by the imperial Parliament which will be re-enforced, for this purpose, by 30 or 40 additional Irish members.

Ireland will not cease to be represented at Westminster, but the number of her representatives will be reduced to 42. These will, however, have the full rights of other members of Parliament and not be confined to participation in imperial and Irish legislation alone. The constituencies for these representatives will be formed by merging some of the Irish boroughs and counties, and disfranchising the Universities.

The highest significance of this bill does not consist in the altered relationship between Ireland and Great Britain which must follow its adoption, important as that is. The measure is frankly introduced by the Government as the first instalment of what is called "Home Rule all round." Similar provision for the establishment of local autonomous governments for Scotland, Wales and England is promised by the Liberal leaders. These measures are urged as imperatively needed in order to relieve the Imperial Parliament of the crushing burden of legislation under which it is now staggering. It has been estimated by a careful student, Mr. H. deR. Walker, that, in the legislation of the last twenty years, 49.8 per cent of the public general acts of Parliament have referred to the separate countries of the United Kingdom, and that only 50.2 per cent of the statutes have related to the United Kingdom as a whole. Even in bills which are of a general character it is frequently necessary, because of the different circumstances and conditions of the different countries, to introduce what are known as application clauses which define exactly how much or how little of the enactment is to apply to Ireland or Scotland, as the case may be. A certain degree of legislative devolution has been already secured through the establishment of the Scottish Standing Committee to which are referred all bills relating especially to the country beyond the Tweed. Administrative decentralization has gone much farther. Ireland has of course almost complete administrative separation. It has been found necessary to revive, after one hundred and forty years of disuse, the office of Secretary for Scotland, and the powers of this minister are increasing rapidly. He has control over such subordinate departments as the Scottish Local Government Board, the Education Office, the Crofter's Commission, and the Congested Districts Board, as well as extensive authority in the field of Scotch Private bill legislation. Both the Chief Secretary of Ireland and the Secretary for Scotland have not unjustly been called prime ministers without parliaments. It is manifestly quite impossible for the Imperial Parliament to exercise any very effective control over the local affairs of these separate commonwealths. A Scottish or Irish Standing Committee does not suffice. Mr. Winston Churchill insists that, "The British parliamentary system is not sufficiently representative of the local and provincial life of the nation. Home Rule all round will, by opening other roads to political distinction, notably enrich it. New and vivifying pulses will begin to beat, and the new nerve centers of a higher organism will spring into being."

With relief from the mass of local and special legislation which is now thrust upon it, the Imperial Parliament will have time and opportunity to bring more careful and critical consideration to the great measures of general concern, and will be able to subject the imperial administration to more effective responsibility. Instead of being little more than the registering machinery for the Cabinet, into which position it has sunk under the intolerable burden of work which modern economic and social conditions have imposed upon it, the House of Commons will, it is predicted, experience something like a revival of its old predominance and independence. Imperial federation, hitherto a fatuous dream, will become a recognized and practical possibility. The self-governing colonies will, in the natural course of events, be given representation in the Imperial Parliament, and the bonds of empire will be immeasurably strengthened. To this glowing forecast Mr. Balfour has made reply that it is a strange and unprecedented procedure to initiate a scheme of federation by a process of disintegration. Federalism, he insists, is always a step toward centralization. It has never in the history of the world resulted from breaking up a government of the unitary type. He challenges the Ministry to point to a single instance in the history of federal government where the federation has not represented a movement toward closer union. This argument, incontrovertible in its way, will not carry much conviction to the minds of Englishmen. The English people have never been seriously influenced by theoretical arguments in making changes in their constitution. Nor have they often paid particular attention to what other nations have done, or what methods they have employed, when circumstances appear to dictate alterations in the bases of their own government. The English constitution has been the model and pattern for continental peoples largely because it embodies the practical political genius of the Anglo-Saxon mind, and the principles of normal development from its own historic origins. It is quite conceivable that, under the special and peculiar circumstances obtaining in the British Empire, federation can only follow a preliminary disintegration of the United Kingdom.

The present bill enjoys a much better prospect of becoming law than ever attended either of Gladstone's measures. The votes on the first and second readings (carried by majorities of 94 amd 101) indicate that the Government has behind it in the House of Commons the united support of the Liberal coalition. On the second reading only one Liberal member spoke against the bill and another alone voted against it. The Parliament Act of last year makes it possible to overcome within two years the resistance which it is certain that the House of Lords will make to the passage of the bill, and to place the measure upon the statute books in spite of their continued rejection. To do this it is merely necessary for the Government to secure its passage through the House of Commons in three succeeding sessions, and for two years to elapse between its original introduction and its final passage for the third time through the House of Commons. This, it is evident, can all be accomplished within the life of the present Parliament. There is no necessity that the question of Home Rule be submitted to the country at a general election. What the verdict would be, were the electorate given an opportunity to pronounce upon the question, it is most difficult to say. If the feeling in England is not enthusiastically in favor of the measure, there is at least the absence of such general and definite opposition as the earlier bills encountered. Scotland and Wales can be counted on to give it a warm support. Scotland is predominantly Liberal, and the resolution of April 25, of the Scottish Liberal members in Parliament, urging upon the Prime Minister "the necessity of introducing a bill providing for the self-government of Scotland next session," may be taken as evidence that the sentiment of the Scotch people is in accord with the general policy of the Government, of which Home Rule for Ireland is a constituent part. The Irish Nationalists of all factions have accepted the measure as satisfactory, and have refrained from criticism of the bill or the proposal of amendments.

Only in Ulster, or more accurately in the four north-eastern counties of Antrim, Armagh, Down and Londonderry, is there anything like strongly concerted and uncompromising hostility. There is, however, danger of very serious difficulties with the North of Ireland Orangemen. Their hostility takes the form of open and avowed threats of resistance to the bill, should it become law. In this they are encouraged by the opposition leaders in Parliament, who contend that this is no ordinary political issue, where defeat in the halls of Westminster ought to be followed by gracious acquiescence to the will of the majority. The present House of Commons, they insist, does not represent the views of the country on this question. It was elected on the issue of the reform of the House of Lords, and Home Rule was not before the voters at all. By-elections indicate that the Liberal Government has lost the support of the nation. A measure which has for its purpose the disruption of the Kingdom, and is opposed by a large minority of loyal Irishmen who ask for nothing else than to be allowed to remain in their present happy condition, must be resisted by every possible means, until by a general election the country has had an opportunity to pronounce its decision. The slogan, coined in the previous Home Rule campaign by Lord Randolph Churchill, "Ulster will fight and Ulster will be right," has become again a party cry. Mr. Bonar Law, the successor of Mr. Balfour as leader of the Opposition, has himself explicitly stated it as the purpose of the Unionist party to support Ulster in its resistance, should the attempt be made to impose a government from Dublin upon it. On September 28 a great mass meeting was held in Belfast, and a covenant was signed by the opponents of Home Rule throughout the northeast of Ireland, embodying a pledge not to acknowledge any parliament at Dublin nor obey its laws, nor pay any taxes which may be levied under such a government. Just how effective this system of "passive resistance" will be is a question. Nearly three-fourths of the taxes in Ireland are indirect; will the Ulstermen stop drinking whiskey, smoking, and consuming tea and coffee? Be that as it may, there is no doubt that the resistance of Ulster, the wealthiest and most prosperous section of Ireland, the only part thoroughly attached to British rule, constitutes for the Government its most difficult problem. There is at least much plausibility in the argument of the Unionists that this resistance is not made by any rebellious or disaffected people against the established order of government, but by a thoroughly loyal and contented populace who ask for nothing more than to retain their constitutional rights as British subjects and citizens. Their resistance is directed merely against the proposal to eject them from their rightful place under the British government, and subject them to the domination of a hateful and tyrannous Dublin government. A proposed amendment to exclude the four Protestant counties from the operation of the bill was defeated by a majority of sixty-nine. No one, not even the Ulstermen themselves, appears to have been willing to accept a compromise based on such a division of Ireland, though the Opposition voted for it from strategic motives.

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Ohio: Changes in the Constitution. While all but eight of the proposed amendments to the Constitution of Ohio have been passed by various majorities ranging from one thousand to eighty-seven thousand, there is still a general feeling of dissatisfaction throughout the state over the result. The people know themselves to be responsible, yet there is a prevalent idea of the whole business having been railroaded through in the interest of radical changes, which a naturally conservative state would be cautious in adopting.

In the first place, it is maintained, no constitutional convention would have been called had it not been for a scheme in the placing of the amendment clause on the ballot, thus causing every person who voted, unless he expressly voted "no," to cast a vote for the affirmative. Another grievance is to the effect that the time was too short in which the people could thoroughly acquaint themselves with the import of the amendments, especially in a Presidential year. The result, it is claimed, is manifest when less than one-half of the voters of the state went to the polls. However, the die has been cast and Ohio is entering upon an era of new things which a great many of her citizens look upon as being yet in the experimental stage.

The Eight Amendments lost were on the:

"Abolition of capital punishment."
"Contempt proceedings and injunctions in labor disputes."
"Woman's suffrage."
"Omitting word 'white' from male franchise clause."

"Use of voting machines."
"Bond issue of $50,000,000 for inter-county roads."
"Eligibility of women for appointive office."
"Out-door advertising."

While the above amendments need not be considered it may be added in passing that "Woman's Suffrage" was defeated by the largest majority. The liquor interests made a hard fight against this clause. It is at least significant that the majority against Woman's Suffrage and "for" License was about the same. Perhaps the strangest vote is that on the word "white." The old Constitution adopted in 1851 used the term, but with the enactment of the Fifteenth Amendment the word became ineffective. It was simply a matter of form and a desire to put the Ohio Constitution in harmony with that of the United States. But "prejudice," it is asserted, prevented its ratification. The heaviest vote against it came from the centers where the negro race was most numerous.

The thirty-four Amendments, now to be a part of Ohio's organic law, will insure the following changes:

In civil cases, nine jurors may bring in a verdict instead of the unanimous body.

The state will now be permitted to take depositions in criminal cases.

Citizens may now bring suit against the state.

The Legislature can no longer limit the amount of damages recoverable for death caused by another.

The Initiative and Referendum was ratified by a majority of over 81,000. Ten per cent. of the electors can propose an amendment to the Constitution; three per cent. can initiate a law and six per cent. may demand the referendum. Laws, such as tax levies, expenses for the government and state institutions, and emergency enactments, are exempt from the provisions if passed by a two-thirds vote of the legislature.

Each branch of the General Assembly will now have power to receive information and compel witnesses to testify and produce records. The Legislature can now pass a bill over the Governor's veto by a three-fifths vote instead of two-thirds as formerly.

Amendment No. 9 provides for a mechanics' and builders' lien. Laws fixing and regulating hours of labor, and establishing a minimum wage scale can now be enacted.

The Workman's Compensation clause compels employers to contribute to a fund to be maintained for the purpose of compensating employes who are injured or contract disease while engaged in their occupation.

To encourage conservation of natural resources, forest lands may be exempted from taxation.

An eight-hour day is to be maintained on all public works.

The impeachment laws are to be strengthened by mandatory statutes providing for the prompt removal of officials.

"Expert testimony" may hereafter be "regulated."

The "Torrens Land Title System," heretofore held unconstitutional, may now be established.

Prison contract labor is abolished.

The powers of the General Assembly in extra session are to be limited to the consideration of the business for which it was convened.

The change in the judicial system is marked and radical. Only one court of review is permitted. The Supreme Court can not reverse the Court of Appeals and hold a law unconstitutional if more than one judge object, but the findings of a lower court in holding a statute unconstitutional may be affirmed by the Supreme Court by a mere majority of the members.

A Common Pleas Judge for each county is another feature of the changes in the judicial system; also the office of Justice of the Peace is abolished in municipalities where municipal courts other than Mayors' Courts are maintained.

Primary elections, extending to the preferential vote for President, are made compulsory.

The state is hereafter to have more complete authority over the public school system; and cities are permitted to exercise "home rule" in the matter of the organization of their Boards of Education. The State Commissioner of Common Schools is replaced by the Superintendent of Public Instruction, to be appointed by the Governor instead of being elected as now. This amendment was altogether needless as there is nothing in the present Constitution to prevent doing all it provides for.

Mutual insurance associations are permitted to be on the same plane with other companies and the legislature will pass laws regulating rates of all companies.

The Board of Public Works is abolished.

State and municipal bonds, inheritance incomes, franchises and production of minerals are taxed. The old provision of uniformity in taxation is no more.

The Legislature is given power to pass sufficient regulatory laws regarding corporations, in the issuance of stocks, and bonds, and has full supervision of their business. Bank stock-holders are subject to double liability and private banks will be placed under full inspection.

State printing may be done by contract or the state can do its own printing.

Civil service is made mandatory as far as practicable in the public service of the state, counties and cities.

Provision is also made for an easier method of amending the Constitution in the future.

Municipal home rule is guaranteed to the cities.

License to traffic in intoxicating liquors was one of the hardest fought and most bitter of the contests. The liquor traffic has been an "outlaw" in Ohio. Now it has been raised to the degree of "respectability," with certain regulating limiting provisions.

Many of the provisions are regarded more in the light of legislative enactments than constitutional fundamentals, while others were permissible under the present Constitution.

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Public Utilities: Two states, California and Rhode Island put into effect in 1912 laws providing for public service commissions. The California law which went into effect in March was enacted at a special session in December, 1911. The Rhode Island law was enacted at the regular session of 1912.

To date fourteen states have enacted such laws. In the order of their adoption of the law, they are: New York and Wisconsin, 1907; Vermont, 1908; Maryland, 1910; Washington, New Hampshire, Kansas, Nevada, New Jersey, Connecticut, Ohio, 1911; California and Rhode Island, 1912. The Oregon Legislature passed the law but it was suspended under the referendum and referred to the people at the coming election. Illinois provided in 1911 for a commission to report on the subject in 1913. Delaware enacted a law for a commission for the city of Wilmington.

The two new laws afford little that is new on the subject. They follow fairly closely the models of other states. Both give ample power of investigation to the commission, in California, the railroad commission, in Rhode Island, the newly created public service commission. The Rhode Island law applies to railroads and all common carriers, street railroads, telegraph and telephone companies or companies furnishing gas or electricity for heat, light or power, but not to municipal waterworks. The California law applies to all common carriers; gas and electric companies furnishing heat, light or power for profit; telegraph and telephone; water companies; pipe lines; wharfingers and warehouse companies.

Both laws require of public service corporations, adequate and safe service at a reasonable price; discrimination is prohibited; rates must be posted; changes must be reported to the commission in advance; and in California, approved; accidents must be reported; investigation may be had on complaint or at the instance of the commission; meters and other measuring devices are subject to test by the commission; standards of service may be fixed; grade crossings are prohibited in future in California and their construction supervised in Rhode Island.

The California law gives the commission power over the issue of stocks, bonds and other securities; the Rhode Island law is silent on that subject.

The California law authorizes the commission to establish uniform accounting systems and to require depreciation funds amd make physical valuations; the Rhode Island law makes no provision. The long and short haul clause of the interstate commerce law is placed in the California law and it is applied to telegraph and telephone companies. The California law also fixes street car fares at 5 cents unless authority is granted for increase; requires physical connection between railroads, telegraphs and telephones and requires a certificate of necessity before a public utility begins work.

Two marked differences are found in the method of enforcement. Under the Rhode Island law, the public utility may appeal to the supreme court and the appeal acts as a stay but any justice or the court itself may prevent the stay if it appears that the appeal is made for purposes of delay. The Wisconsin provision is adopted requiring that if new evidence is introduced before the court the case shall be stayed for 60 days until the commission has had a chance to pass upon the new evidence. The California law provides that where an order has been issued by the commission, there can be no appeal to the courts unless an application for rehearing has been made and refused. The order goes into effect at once and no injunction can be issued "otherwise than upon three days notice and after a hearing, and if the order of the commission is suspended the order suspending the same shall contain a specific finding based upon evidence submitted to the court that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage."

A suspending bond must be filed sufficient to insure the payment of damages caused by non-enforcement, and the court may compel a certain amount of money from time to time to be placed in trust to pay for excess charges collected.

The California law has a new provision to safeguard its provisions for home rule for cities. The provision reads:

"This act shall not effect such powers of control over any public utility vested in any city and county or incorporated city or town, as, at an election to be held pursuant to laws hereafter passed by the legislature, a majority of the qualified electors voting therein of such city and county or incorporated city or town shall vote to retain, and until such election, such powers shall continue unimpaired in such city and county or incorporated city or town; but if the vote so taken shall not favor continuation of such powers they shall thereafter vest in the commission."

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Tax Measures of 1912. Only twelve legislatures have met in regular session, and two in special session, so far this year. Fewer changes in tax laws have been enacted than in 1911. There have been, however, more constitutional amendments on the subject of taxation submitted to the people than ever before; and probably there have never been as many special commissions investigating various phases of taxation.

LEGISLATION

The most important changes this year were perhaps those in Rhode Island. A permanent tax commission of three members was authorized and has been appointed; its duties include supervision of local assessments, furnishing blank assessment rolls at the expense of the state, and assessing the "corporate excess" of industrial corporations. The law directs the separate assessment of land and buildings. Intangible personal property is now to be taxed at the rate, uniform throughout the state, of forty cents on the hundred dollars. The same rate applies to bank and trust company shares and to "corporate excess" but the tax in this case goes to the state. The term "corporate excess" means substantially the difference between the value of the entire property of the corporation (without offset for bonds or other debt) and the assessed value of its real estate and tangible personal property; allowance being made for property outside the state. A gross earnings tax for state purposes has been imposed on public service corporations, ranging from 1 to 3 per cent.

Massachusetts revised its inheritance tax law to eliminate the taxation of non-residents. The only property of a non-resident decedent now taxable in Massachusetts is real estate; both tangible and intangible personality being exempt. This change goes a step further than the model law proposed by the National Tax Association and enacted in New York in 1911. The rates have been increased and are substantially the same as those adopted in New York last year, though applied somewhat differently; the exemption to direct heirs is larger ($10,000) and there is an intermediate class between direct and collateral, consisting of brothers and sisters, nephews and nieces.

New York passed few tax laws this year, as the important legislation of 1911 was not enacted until July, and some changes were not effective until October. Household furniture and personal effects to the value of $1,000 have been exempted. The prior exemption was $250 for certain enumerated articles. Three laws were passed to encourage replanting of forest land and the maintenance of woodlots by a reduction in assessment, subject to the approval of the conservation commission; in the case of large areas replanted the trees are to be exempt entirely and the land alone is to be taxed.

The Minnesota legislature in special session passed a bill increasing the railroad gross earnings tax from four to five per cent.; this, however, must be ratified by the people.

Mississippi enacted a state "privilege" tax of twenty cents per acre upon each person, association, firm or corporation, "pursuing the business of buying, owning or holding more than one thousand acres of timber lands" in the state. Also a privilege tax on "all transfers other than deeds of trust or mortgages of realty" of one dollar per thousand or fractional part of a thousand above five hundred dollars on the consideration, which shall in no case be less than the value of the property.

A graduated income tax was passed, reported to be on incomes in excess of $2,500, at the rate of five mills, increasing to 20 mills on incomes of $20,000 and upward. Several inquiries have failed to secure exact information.

The Virginia legislature received the report of its special tax commission and gave considerable attention to taxation; but the only legislation was an increase of the income tax exemption to $2,000.

The federal income tax amendment was ratified by Arizona, Louisiana, and Minnesota, making a total of thirty-four states, out of a total thirty-six needed to make the amendment effective.

SINGLE TAX

The province of Alberta, Canada, has established this year the land value tax system for all local revenues outside of cities. For a number of years it has been optional for cities and villages to exempt improvements and many have done so; there has been no personal property tax, but some business taxes based on area of premises occupied have been levied.

At the legislative session, in February this year, a rural municipality act was passed; all municipalities organized under this act will be required to raise their revenue from a tax on the actual cash value of land; there is no provision whereby any other kind of taxes can be levied. A town act was also passed, with similar provisions, affecting all towns except two incorporated under an old special ordinance.

The village act was amended also, making it mandatory for all villages to raise the revenues from land values only. Many of them had taken advantage of the option to do this, but the system is now mandatory. No business tax can be levied by either towns or villages.

The cities carry on business under special charters, but most of them have exempted improvements and personal property.

PERMANENT AND SPECIAL COMMISSIONS

Arizona authorized a permanent tax commission of three members, who have been appointed. At the expiration of terms of present members, their successors will be elected, one every two years for a six years term. This is probably the only elective state tax commission. In Colorado and North Dakota permanent commissions of three members each have been appointed pursuant to legislation of 1911. The Rhode Island commission has been mentioned.

Special investigating commissions were authorized by six states, as follows:

Connecticut, in the fall of 1911, three members, to investigate public service corporation taxes in that state.

Kentucky, this year, five members, to investigate revenue and taxation generally and report a plan for revision, to the governor in 1913 and to the legislature in 1914.

Maryland, six members, to report to the legislature of 1914.

New Jersey, five members, to investigate the present methods of making assessments for taxes and report to the legislature of 1913.

Utah, three members, to investigate taxation generally.

Louisiana, in July authorized a commission of thirty-three members that began work at once and reported to a special session of the legislature, which met August 12. The legislature has submitted to the people a series of amendments to the constitution.

CONSTITUTIONAL AMENDMENT

The amendments now pending are so varied in character that they cannot well be grouped into classes. In general, however, the majority of the amendments submitted by state legislatures follow the recommendation of the National Tax Association that, "all state constitutions requiring the same taxation of all property, or otherwise imposing restraints upon the reasonable classification of property, should be amended by the repeal of such restrictive provisions."

AMENDMENTS ADOPTED IN OHIO

Ohio is the one state where distinctly reactionary steps have been taken. Amendments have been adopted that make no change in the "uniform rule" taxing all property alike, that has been generally condemned for twenty years or more and from which other states are striving to free themselves. Provisions to permit additional taxation, however, have been added.

This "uniform rule" provision of the Ohio constitution was adopted in 1851 and is as follows:

> "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money."

This provision has been criticised severely by investigating commissions of that state, and has been used generally by outsiders as an example of what should be avoided. The only modification secured in sixty years was the exemption of state and local bonds of Ohio in 1905. Various other attempts to amend this provision have been made, all failing because of the constitutional requirement that an amendment to be adopted must receive a majority of the total vote cast at the election. In 1908 an amendment to permit classification was submitted pursuant to the recommendation of a special tax commission, and received 339,000 affirmative votes, against 95,000 negative, but failed of a majority.

Largely as a result of dissatisfaction with the tax provisions of the constitution and the repeated failure of attempts to secure relief by the ordinary methods of amendment, a constitutional convention was called. It submitted, among others, two amendments relating to taxation, and these were voted on and approved by the people September 3.

One amendment changed the article (12) relating to taxation. The "uniform rule" clause (given above) was continued without alteration or modification. The exemption (1905) of public bonds was limited to those now outstanding, so that future issues will be taxable. The section which forbids the general assembly to levy a poll tax was amended to prohibit any poll tax, or the requirement of any service that may be commuted in money.

The following tax sections were added:

> "7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.
>
> "8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.
>
> "9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.
>
> "10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals."

It will be seen that the income, franchise and production taxes authorized must be, if levied, in addition to the advalorem property tax upon the property from which the income is derived or in respect of which the franchise tax is paid. The prior (and continued) provision forced the taxation of property and also the taxation of the evidences of ownership of property. The amendments will permit the taxation of incomes from both, and with the addition of taxes on franchises and production, sextuple taxation will easily be possible. The provision that at least half the inheritance tax must go to the local tax district will have a very disturbing effect on local revenues if the rates enacted are at all large.

The other tax provision is in the amendment establishing the initiative and referendum. It reads as follows:

> "The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property."

As the existing tax provisions of the constitution prohibit any such laws as are specified in this clause, and the only pending amendment of these tax provisions continues the prohibition, this further prohibition seems superfluous. It indicates, however, the attitude of the convention towards any proposal to depart from the rigid uniformity of the general property tax.

Under the general heading of conservation of natural resources an article is added to the constitution providing in part that "Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation."

AMENDMENTS PENDING[1]

Kentucky. The legislature has submitted to the people, to be voted on at the November election *1913*, an amendment repealing the present requirement of the uniform taxation of all property (which is in effect similar to the Ohio provision of 1851) and substituting the following:

> "Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all

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[1] Except in Kentucky, all pending amendments are to be voted on at the November election this year.

taxes shall be levied and collected by general laws. The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts, shall not be subject to taxation."

Laws passed pursuant to this clause are to be subject to referendum.

Utah. Several amendments were submitted to be voted on November, 1912. The principal changes repeal the present "uniform rule" which is similar to Ohio, and substitute language in effect like the Kentucky proposal given above.

Massachusetts. An amendment is now before the people, providing that:

"Full power and authority are hereby given and granted to the general court (Legislature) to prescribe for wild or forest lands such methods of taxation as will develop and conserve the forest resources of the commonwealth."

The constitution does not now permit classification of property for taxation at different rates.

California. A home rule amendment has been submitted by initiative petition, empowering any county, city, town, district, or township, by vote of its qualified electors, to raise and collect revenue for its local purposes in such manner as it may determine; providing that such taxes or exemption therefrom shall be uniform upon any class of property.

Missouri. An amendment has been submitted by initiative petition designed to establish substantially the single tax plan of raising revenue by the year 1920, through gradual exemptions of everything but land and public service corporation franchises. Liquor and other licenses in the interest of public health, peace and safety may continue to be imposed, and the amendment provides that it does not limit the power of the state to tax any form of privilege, franchise or inheritance.

Another amendment is to establish a tax commission of three members in place of the present board of equalization.

New Hampshire. The constitution now provides that the legislature may "impose and levy proportional and reasonable assessments, rates and taxes." This prevents classification, although the legislature may exempt any property entirely, and, as in Pennsylvania, no property is held taxable unless specifically mentioned in the law. A constitutional convention held in June, submitted several amendments designed to permit classification, and to permit gross earnings taxes on public service corporations in lieu of advalorem property taxes; also to permit graduated (progressive) inheritance taxes.

Louisiana. Following the report of a special tax commission, the legislature in August submitted a long series of amendments, with the general purpose of separating state and local revenues, and taking all public service corporation "operating" property for state taxation.

Oregon. Presents an interesting and somewhat complicated situation. There are eight state wide and three county tax measures pending, to be voted on in November. But despite contradictory and antagonistic provisions, the Oregon measures in contrast to Ohio, are all aimed against the uniform rule and the general property tax.

In brief, there are two amendments proposed by the legislature of 1911 to abolish the "uniform rule," and one to repeal the county option amendment approved in 1910. There are four measures prepared by a legislative commission this year, and submitted by initiative petition, as follows:

1. A constitutional amendment permitting the taxation of incomes; 2, a law exempting household goods and personal effects actually in use; 3, a law exempting credits (bonds, mortgages and shares, except bank stock or banking capital); 4, an inheritance tax law eliminating double taxation of non-residents, and increasing the present rates.

Another pending amendment was first styled "graduated single tax and exemption," but this title was changed to the more appropriate one of "graduated specific tax and exemption amendment."

This amendment proposes a graduated tax upon land values or waterpower values, or franchise values of any kind; or rights of way of public service corporations, amounting to more than $10,000 in one ownership in any one county. The tax ranges from $2.50 per $1,000 on the first ten thousand dollars above the exemption, up to $30. per thousand (3 per cent.) on values over $100,000. Payment of this specific tax does not relieve the property from the ordinary tax rate. The amendment provides also that personal property and improvements shall be exempt unless the people of any county vote to tax them by enacting a special county tax law.

In three counties, measures have been submitted under the provisions of the 1910 amendment, to abolish the taxation of personal property and improvements.

From this summary of amendments pending in various states, it is apparent that, except in Ohio, there is much dissatisfaction with the rigid uniformity of the general property tax.

The results of the elections will be scanned with keen interest by all who are striving, in one way or another, for progress towards better tax systems.

Arthur C. Pleydell,
Secretary New York Tax Reform Association.

Vocational Education: Legislation of 1910-1911.[1] One of the great gains in recent legislation for practical training has been a more intelligent and clear-cut use of such terms as vocational, industrial, agricultural and household arts education. The want of a clear understanding of the meaning of these and similar words brought about a confusion which has reflected itself in both current discussion and lawmaking.

The most commonly accepted usage of these terms today, is that which is set forth in recent Massachusetts legislation. In 1911,[2] when that Commonwealth recodified and amended its laws relating to vocational education, it defined vocational education as meaning any education the controlling purpose of which is to fit for profitable employment; industrial education as that form of vocational education which fits for the trades, crafts and manufacturing pursuits, including the occupations of girls and women carried on in workshops; agricultural education as that form of vocational education which fits for the occupations connected with the tillage of the soil, the care of domestic animals, forestry and other wage-earning or productive work on the farm; household arts education as that form of vocational education which fits for occupations connected with the household.

There is a marked tendency in dealing with the subject of practical education in this country to precede legislation, particularly if it be of any extensive character, by preliminary commissions for the study of the problem. These commissions are sometimes known as Commissions on Vocational Education, sometimes as Commissions on Industrial Education, the former title being in recent years more frequently employed. These commissions investigate throughout their respective states the needs for the education of persons employed or aiming at employment in wage-earning occupations; to what extent these needs are met by existing institutions and what additional laws and other administrative measures are required in order to meet the situation; and how this new legislation may adapt itself to the social, economic and educational conditions of the Commonwealth which it is designed to benefit. During the past ten years, preliminary commissions preceding the attempt to secure legislation for practical education have served the following states: Connecticut (1903–07), Massachusetts (1905–06), Maryland (1908–10), New Jersey (1908–09), Maine (1909–10), Michigan (1909–10), Wisconsin (1909–11), Indiana (1911–13), Illinois (1911–13).

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[1] In the next issue of the Review the laws upon this subject passed during the current year (1912) will be treated.

[2] Sec. 1, Chap. 471, Acts 1911.

So far as laws are concerned comparatively little has as yet resulted from the work of these commissions in Maine, Maryland and Michigan. In Massachusetts, Connecticut, New Jersey, and Wisconsin, state systems of vocational education have been the direct outcome. The Indiana Commission on Industrial Education and the Illinois Educational Commission will report to their respective legislatures on January 1, 1913, together with recommendations as to what laws should be adopted. New York and Ohio are the only two states with rather extensive provisions for forms of vocational education whose laws did not come as the direct result of the preliminary labors of commissions.

It is interesting to note that six years after the report of the Massachusetts Commission on Industrial and Technical Education, Massachusetts, in 1911,[3] authorized the State Board of Education to begin a new and additional investigation of the need and possibilities of part-time schooling for children, fourteen to seventeen years of age with the view of extending this kind of work in that Commonwealth. This investigation is now being completed, a final report being submitted to the Legislature, January 1, 1913. The experience of all the states seems to show that the employment of a preliminary commission is the best way to begin the task of getting the right kind of vocational schools for a state.

The pronounced tendency at the present time is toward the appointment of a preliminary commission in each state to study conditions and recommend legislation before any attempt is made to set up a state-wide system of vocational education. There is a growing recognition that such commissions should have adequate time, usually not less than two years for their labors; that they should be equipped with sufficient funds to enable them to do their work properly and that there should be a large representation of laymen as well as educators in their membership.

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[3] Chap. 64, Resolves of 1911.

There are laws in most all of the states relating to such subjects, as manual training, domestic science, gardening and elementary school agriculture. In some instances state money is given for their encouragement but usually the legislation permits, and in some instances requires, the towns and cities to carry on this work entirely at local expense. In most of the Commonwealths, there is very little provision for vocational education of a thoroughgoing type for those over fourteen years of age. There is in many instances a failure to recognize the difference between vocational education and manual training. Late legislation, however, regards manual training as being a part of a liberal or general education, giving valuable general rather than special preparation for life, and vocational education as being an education whose dominant purpose is to fit boys and girls for successful wage-earning. The pronounced tendency of the states is to leave manual training as a part of the general education which has traditionally been supported by the local community and to give state aid to stimulate and encourage local authorities everywhere to take up vocational education for the practical training of those over fourteen years of age.

Only five out of the forty-eight states have thus far adopted what might be called state systems of vocational education: Massachusetts (1906)[4], New York (1907)[5], Connecticut (1909)[6] New Jersey, (1906–11)[7] Wisconsin (1911).[8] A state system of vocational education is here regarded as one in which there was some degree of state support or control or both, over the schools provided for in the laws. It is certain that some effort will be made to establish such systems in Indiana and Illinois and probably in Pennsylvania during the coming year. In what follows an effort will be made to set forth the comparative features of the state-wide schemes already existing.

These state schemes differ widely as to the amount of support and control by the commonwealth. Connecticut has complete state control and support; its trade schools authorized by law being administered by the State Board of Education and supported entirely from appropriations made by the legislature from the general treasury. Massachusetts, New York and Wisconsin have partial state control and support, the state paying part of the expense of carrying on the work and, through a state board of control, having a greater or less degree of power in its supervision and administration. In New Jersey, the state gives as much as the local community to the support of the venture; practically the entire control resting in the hands of the local authorities.

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[4] Chap. 505, Acts 1906, Chap. 471, Acts 1911.

[5] Chap. 21, Laws 1909, Art. 22, Chap. 16, Laws 1910.

[6] Chap. 85, Acts of 1909.

[7] Chap. 20, Acts, 1906, Chap. 78, Acts 1909.

[8] Chap. 616, Acts 1911.

In Connecticut provision is made only for the teaching of trades; in Massachusetts, agriculture, household arts and industrial training are aided; in New York general industrial and trade training and education in agriculture, mechanic arts and home-making are subsidized. New Jersey gives grants from the state treasury for industrial education as distinguished from manual training and subsidizes, in addition, elementary agriculture and home economics in summer classes. Besides making provision for agricultural schools in the country and for trade schools in large cities, Wisconsin supports a state system for industrial apprentice and trade instruction. In most of the recent legislation the state systems established provide state aid for training in agriculture, the household arts and the industries.

In practically all of the state systems thus far established, the schools aided are open to all children over fourteen years of age who are able to profit by the instruction offered. In Massachusetts, Connecticut, New York and Wisconsin, the instruction receiving state grants must be open to pupils over fourteen years of age who are able to do the work successfully even though they have not received a common school diploma. The effect of this is to set up a new kind of secondary school paralleling the regular high school for those over fourteen years of age.

In Connecticut the law authorizes only a day trade school for those between fourteen and eighteen, who can give their entire time to the training. Massachusetts provides all-day industrial schools for boys between fourteen and eighteen; part-time schools for those between fourteen and twenty-five who can give a portion of their working day or week to after-training, and evening schools for the further instruction of the mature worker. Thus far New York and New Jersey have only given state encouragement to the all-day class. Wisconsin makes grants to all-day schools only when they teach trades in large cities or agriculture in the counties. By sweeping legislation in 1911, a system of part-time and continuation instruction has been set up to deal with the problem of the training of the wage-earnering youth or adult who has already gone to work. The drift in all the states is toward a system of schools—all-day, part-time and evening—which will meet the vocational needs of those over fouteen, whether they remain in school or go to work.

The entire cost of the public trade schools of Connecticut is met from the treasury of that commonwealth. In Massachusetts the local community builds and equips the plant and the state pays one-half the operating expenses. This is substantially true in Wisconsin as well. One-half of the amount expended by the local authorities is contributed by New Jersey, while New York gives the town or city five hundred dollars for the first teacher of practical work who is employed and two hundred and fifty dollars for each teacher of the same character who is added to the teaching force. In recent legislation the tendency is toward a state system which will require the local commmunity to establish the school at its own expense, meet all the operating expenses and receive from the commonwealth one-half the cost of maintenance if the work is approved by the State Board of Control.

There is no local support as has been pointed out for the trade schools of Connecticut, the entire administration being in the hands of the State Board of Education subject to the approval of the legislature. Massachusetts gives state aid as payment for results accomplished. After the money has been spent by the local community, and the work is approved by the Board of Education, reimbursements for one-half the cost of carrying on the work is recommended to the legislature. The board is required by law to approve of the school as to organization, control, location, equipment, course of study, qualification of teachers, methods of instruction, conditions of admission, employment of pupils, and expenditures of money. State grants in New York are dependent upon the approval of the course of study by the State Department of Education. In general, payments to the schools in Wisconsin are made on the basis of results after the work has been done and approved by the State Board. It appears that in New Jersey state aid is practically automatic, being dependent largely if not almost entirely, on the raising and expending of money by the local authority. The best public opinion as well as recent legislation seems to favor the idea of the distribution of state money for vocational training not automatically but as payment for results which have met with the approval of the state authorities.

Everywhere there is a growing recognition of the need of close cooperation between the schoolmaster and the man of affairs in carrying on practical education in this country. Three means of securing the participation of laymen are possible, namely:—by lay representation on state boards of control, by lay representation on local boards of control and by advisory committees surrounding the principals and teachers of vocational schools, composed of employers and employes who have had practical and successful experience in the kind of training which the schools give. Up to this time state boards of education and local school committees have not been chosen with the idea of their special fitness to deal with the problems of practical education. Hence the attempt to secure in recent legislation a larger helpful influence from the practical man in the work of schools fitting men and women for the duties of home and shop and farm.

The laws of the different states vary greatly in this matter. Connecticut has direct control of its trade schools by the State Board of Education which also has charge of general education in that commonwealth. A majority of its members are lay rather than professional. Most of them have not been selected for their special fitness for dealing with the task of vocational education. There is no local board of control for the school and no local advisory committee surrounding it. The State Board of Education in Massachusetts is responsible for the administration of vocational education, as well as general education. Its lay members have not in general been selected with any special reference to their experience and fitness to deal with problems of vocational education. The local boards of control for the state-aided schools of that commonwealth may be either the regular school committee of the community or a separate board of trustees chosen for their special fitness in dealing with the task, usually the former administrates the school. The Act of 1911 requires all schools in the state asking for approval and aid to have advisory committees composed of members representing local trade industries and occupations whose duty it shall be to counsel with and advise the school officials in the discharge of their duties.

There is no state board either professional or lay in New York. The administration of the state-aided vocational schools is entirely in the hands of the Commissioner of Education and his assistants.

The schools are managed locally by the regular school committee. The law requires the appointment of advisory boards similar to those of Massachusetts. In New Jersey the state board of education, which is almost entirely a lay-body has little control over the vocational schools. Usually the school is controlled by the local board of trustees, a lay-body, consisting of the Governor, Mayor and eight others appointed by the Governor. No advisory committees are authorized or required under the law.

In the recent laws of Wisconsin, we find the most complete assertion of lay interest in the country. The part-time and continuation schools of the state and practically all other vocational training has been placed in the hands of the state industrial commission made up largely of laymen and having no responsibility for the general education of the state. In the cities and towns, local boards of control, entirely independent of the regular school committee are provided for and given the duty and power of carrying on the part-time and continuation schools. There is every indication that the legislation of the future will give a larger recognition to the place of the layman in the state systems of vocational training which cannot help but have its effect upon the practice of the regular schools in this respect.

The two most significant pieces of legislation with reference to vocational education in 1910–11 were the innovations introduced into the laws of Ohio and Wisconsin. In both these commonwealths, the emphasis has been laid upon the encouragement of part-time and continuation schools; in both the approach has been partly through an attempt to claim by law a portion of the working day of the adolescent for after-training at the expense of the public.

In 1910,[9] Ohio, without any previous legislation on the subject, injected a provision for part-time and continuation education into the attendance laws of the state. No state aid is given to vocational training of any kind and there is no state board of education for the administration of either general or practical training. The Ohio statute which was the first enacted in this country for the compulsory part-time schooling of those who were engaged in wage-earning occupations, required the attendance at school of all those under sixteen years of age who are not able to meet a test for fifth year pupils in reading, spelling, writing, English, grammar, geography and arithmetic. Those who have satisfactorily completed the eighth year of the common schools but are not regularly employed are required to attend the regular schools until they secure employment or have reached their seventeenth birthday. Whether or not a town or city shall establish part-time classes for those who have gone to work is left as a referendum to the board of education of the community. In school districts where no part-time day classes are provided all those fourteen years of age who have accepted regular employment after meeting the fifth grade test either in class or by examination are exempt from further school attendance; but wherever the Board of Education provides part-time day classes for the instruction of youths over fourteen years of age who have taken employment, attendance by such pupils upon this instruction is obligatory until they have either completed the eighth grade of the common schools or reached their seventeenth birthday.

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[9] House Bill 452—Ohio Session Laws 1910.

As the result of the recommendations of the Wisconsin Commission on Industrial Education, 1910, laws were passed in 1911 in which the responsibility of the state for the training of all adolescents up to the age of sixteen, whether they remain in school or go to work is asserted; the state taking complete control educationally, so to speak, of the child from his seventh to his sixteenth year.

No child under sixteen is permitted to work at any occupation hazardous to body, health or character.[10] Every normal child is required to attend regularly the public school, or other equivalent school, from the seventh to the fourteenth year. Between fourteen and sixteen years of age there is an alternative; every child shall continue to attend the common school faithfully or, upon obtaining a definite permit from the Commission of Labor, a truancy officer, or the judge of a state, county, or municipal court, the child may enter upon a definitely specified useful occupation, working thereat not more than 48 hours per week, including five hours per week to be spent in the industrial school. If he discontinues the permitted occupation at any time he must return at once to the public school and the employer must return the permit for cancellation.

Every child in Wisconsin between fourteen and sixteen years of age, who, under a special permit enters upon some useful employment, must go to an industrial, commercial, continuation, or evening school for five hours each week, the employer continuing the wages during those hours, the attendance upon school being for such hours, and at such places, as the local Board of Education prescribes.

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[10] Wisconsin Child Labor Law, Chap. 479; Chap. 616, Acts 1911.

Wisconsin is apparently determined to do away with illiteracy, Section 1728a–11[11] requiring that no person shall employ a minor over fourteen years of age in a community where there is an industrial school for the industry in which the minor works without first securing a written permit from "the commissioner of labor, state factory inspector, or any assistant factory inspector, or from the judge of a juvenile court where such child resides, authorizing the employment of the minor as provided in Section 1728b of the statutes, and certifying either to his ability to read at sight, and write legibly simple sentences in the English language, or that he is a regular attendant at the public evening school or continuation school." This provision operates only against illiteracy, as attendance upon industrial schools in other cases is not compulsory after the age of sixteen.

Wisconsin has likewise rewritten her apprenticeship laws.[12] The former law was written in 1849 and under present industrial conditions was obsolete. It becomes a punishable offense to form "any contractual relation in the nature of an apprenticeship" without complying with this new law. The law requires that all apprenticeship agreements shall be signed by the legal representative of the minor and by the employer. The agreement shall state the number of hours to be spent in work and the number of hours to be spent in instruction; the total of such hours shall not exceed fifty-five in any one week.

The agreement must provide that *the whole trade,* as carried on by the employer, *shall be taught,* and shall state the amount of time to be spent at each process machine; also that not less than five hours per week of the before mentioned fifty-five hours per week shall be devoted to instruction, including instruction in English, in citizenship, business practice, physiology, and such other branches as may be approved by the State Board of Industrial Education. It shall name the amount of compensation to be paid the apprentice.

The instruction may be given in a public school, or in such other manner as may be approved by the State Board of Industrial Education. Failure to attend school subjects the apprentice to a loss of compensation "for three hours for every hour such apprentice shall be absent without good cause." It is not required that the apprentice attend school during such parts of the year as the public school is not in session.

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[11] Chap. 522, Laws 1911. Sec. 1728a–11–17, Wisconsin Statutes.

[12] Chap. 347, Laws 1911.

The new Truancy Law[13] (Section 439a, etc., published by the Industrial Commission, Madison) by specific provisions, requires all truancy officers, and others in interest, to see to it that every child up to sixteen years of age shall attend the common school, or an equivalent parochial school, until he has graduated from the elementary school and can furnish proper certificate to that effect, "or, if over fourteen and under sixteen years of age, to attend school, or become regularly employed at home or elsewhere," under permit as before mentioned, and with five hours per week in the industrial school.

C. A. Prosser,
Secretary National Society for the Promotion of Industrial Education.

Correction. In the August issue it was stated that Maine had voted against prohibition. This was a mistake, the question of resubmitting the question to the people of Maine, already a prohibition State, being voted down by a few hundred votes. It was also mistakenly stated that Massachusetts had repealed the "bar and bottle" law.

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[13] Sec. 439a, Laws 1911.

NEWS AND NOTES: PERSONAL AND BIBLIOGRAPHICAL.

EDITED BY W. F. DODD.

Mr. S. Gale Lowrie has been elected Associate Professor of Political Science at the University of Cincinnati to fill the vacancy left by Professor Brooks who went to Swarthmore as Professor of Political Science. Mr. Lowrie will also be Head of the Municipal Reference Bureau of Cincinnati.

Mr. Milton E. Loomis has been appointed Instructor in Political Science at the University of Wisconsin to take the place of Mr. W. L. Bailey who has accepted an Assistant Professorship at Iowa College.

Professor H. L. McBain of the University of Wisconsin has been granted a leave of absence for the first semester. He will spend the time in New York.

Dr. S. K. Hornbeck, Professor of Political Science in the Provincial College at Hongchow and Secretary of the Famine Relief Commission of Shanghai will become an Instructor in Political Science at the University of Wisconsin next semester. Professor Hornbeck is now engaged in making an investigation of the commercial situation in Manchuria, with special reference to the open door policy.

Dr. Benjamin B. Wallace is spending the year at the University of Wisconsin in making an investigation of the open door policy for the Carnegie Foundation.

Dr. Herman G. James, until recently a graduate student at Columbia University, has been appointed adjunct professor in the school of government of the University of Texas.

Dr. W. B. Munro, until recently assistant professor of government at Harvard University, has been elected professor of municipal government in the same institution.

Dr. Samuel P. Orth has been appointed acting professor of politics in Cornell University for the first semester of 1912–13.

In the August number of this REVIEW (p. 457) the name of the author, Professor Willard E. Hotchkiss of Northwestern University, was by inadvertence omitted from a note regarding *The Judicial Work of the Comptroller of the Treasury* (Cornell Studies in History and Political Science, Vol. III. 1911. Pp. xiii, 164.)

Professor J. W. Garner resumed his work at the University of Illinois this fall, after a year's leave of absence abroad.

Mr. Ralston Hayden (M.A., University of Michigan, 1911) has been appointed to an instructorship in political science at the University of Michigan.

Mr. William M. Hunley has been promoted from an instructorship to an assistant professorship in the University of Virginia.

Mr. John A. Lapp, Legislative Reference Librarian of Indiana, has also become lecturer in legislation at Indiana University. Mr. Lapp devotes one day a week to the University, and gives courses in legislation and special lectures on problems of legislation.

Professor J. H. Reynolds, head of the department of history and political science in the University of Arkansas, has been elected acting president of the same institution for the ensuing year. Associate Professor David Y. Thomas has been made full professor and acting head of the department of history and political science, and Mr. Carl Stephenson assistant professor.

The State Historical Society of Iowa has in press the following publications: *History of Road Legislation in Iowa* by Professor John E. Brindley; *History of Indemnity for Work Accidents in Iowa* by Professor E. H. Downey.

Mr. Sudhindra Bose of Calcutta, India, (M.A., University of Illinois) is giving a course in "Oriental Politics and Civilization," at the State University of Iowa.

Mr. Elliott H. Goodwin, who has held the position of secretary of the National Civil Service Reform League and the Civil Service Reform Association of New York since 1902, has resigned to become general secretary of the Chamber of Commerce of the United States of America, which was organized as a result of the National Commercial Conference held in Washington last April. Mr. Goodwin's offices are now in Washington.

Anatole Leroy-Beaulieu, Director of the École Libre des Sciences Politiques, died in Paris on June 15, 1912. M. Leroy-Beaulieu was the author of numerous books dealing with the broader political and social questions, but was probably best known to English readers through his work on Russia which was translated into English under the title of *The Empire of the Tsars* (3 vols. 1893–96).

The Harris Political Science Prizes are again offered for the year 1912–13, and the competition is open to undergraduates in the colleges and universities of Indiana, Illinois, Michigan, Minnesota, Wisconsin, and Iowa. The subjects for this year are: the commission form of government; the work of public service commissions; and child welfare legislation. For further information application should be made to Professor N. D. Harris, Northwestern University, Evanston, Illinois.

The meeting of the Institut de Droit International was held this year in Christiania, during the latter part of August and the early part of September. The Institut voted a project concerning the effect of war on treaties, and devoted some attention to the discussion of a proper program for the next meeting of the peace conference. It accepted an invitation to become an advisor to the division of international law of the Carnegie Foundation for International Peace.

A collection of the Political Writings of Rousseau in two volumes is to appear shortly from the Cambridge University Press (Putnam).

Power of Congress over Interstate Commerce, by Thomas Carl Spelling (Washington, 1912, pp. 318) was prepared for the Judiciary Committee of the House of Representatives, and is primarily a digest of decisions of the United States Supreme Court in cases relating to interstate commerce.

Volume thirty-seven of the report of the Immigration Commission deals with immigration legislation (61st Cong., 3d sess., Senate Doc. 758. Pp. vi, 956). It contains a brief historical account of immigration legislation, the text of federal immigration laws, a digest of immigration decisions, the text of steerage legislation with some historical introduction, and a digest and compilation of state laws relating to immigration and aliens.

Present interest in impeachment cases is responsible for the publication by the United States government of two documents dealing with the subject: *Impeachment of Charles Swayne.* Proceedings in the House of Representatives (House Committee on Judiciary, pp. 700); *Extracts from the Journals of the United States Senate in all cases of impeachment presented by the House of Representatives, 1798–1904.* (62d Cong. 2d sess., Senate Doc. 876. Pp. 594.)

The *Year Book* for 1911 of the Carnegie Endowment for International Peace (Washington, 1912, pp. xiii, 195), contains a full statement of the organization and plans of that institution. Other agencies for the promotion of international peace are dealt with, and there is a full discussion of the relations of the Endowment to such other agencies.

The new edition of The History of Trade Unionisms by Sidney and Beatrice Webb (Longmans, Green and Co., London, 1911) is a reprint of the original edition with the addition of an introduction. The greater part of the newly added introduction is devoted to a consideration of the decision in the Osborne Case, but the main tendencies in the history of English trade unionism since the publication of the first edition of the History in 1894 are also indicated.

"Labor Laws and their Enforcement" (Longmans, Green and Co., New York, 1911) is the second volume in a series of Studies in Economic Relations of Women issued by the Women's Educational and Industrial Union of Boston. The present volume comprises six essays by different authors, on various aspects of labor legislation in Massachusetts. Professor Edwin F. Gay of Harvard University contributes a preface, and Professor Susan M. Kingsbury of Simmons College an introduction.

Two books have recently been published which seek to do for France what was done for England by Prof. A. V. Dicey's *Law and Public*

Opinion in England during the Nineteenth Century: Joseph Charmont's *Les transformations du droit civil* (Paris, Colin, 1912, pp. xv, 294); and Léon Duguit's *Les transformations générales du droit privé dupuis le Code Napoléon.* (Paris, Alcan, 1912, pp. ii, 206.)

To Dr. Karl Strupp's *Urkunden zur Geschichte des Voelkerrechts* a supplement has been issued (Gotha, Perthes, 1912, pp. viii, 106) which contains documents relating to Morocco, Tripoli, and Persia, and some of the recent arbitration treaties.

Among the books recently published or announced for publication the following are of interest to students of political science: *Anson Burlingame and the First Chinese Mission to Foreign Powers,* by Frederick Wells Williams (Scribner); *The Oregon System,* by Allen H. Eaton (McClurg); *The New City Government,* by Henry Bruére (Appleton); *Social Progress in Contemporary Europe,* by F. A. Ogg (Macmillan); *The Governments of Europe,* by F. A. Ogg (Macmillan); *The Government of American Cities* by William B. Munro (Macmillan); *The Government of England,* revised edition, by A. Lawrence Lowell (Macmillan); *Handbook of Municipal Accounting,* by U. L. Leonhauser (Appleton); *Majority Rule and the Judiciary,* by William L. Ransom (Scribner); *Socialism and Democracy in Europe,* by Samuel P. Orth (Holt); *The Courts, the Constitution, and Parties,* by A. C. McLaughlin (University of Chicago Press); *A History of the Presidency from 1897 to 1909,* by Edward Stanwood (Houghton, Mifflin); *The Essentials of International Public Law,* by Amos S. Hershey (Macmillan).

It has been very difficult in recent years to obtain complete sets of Martens' *Recueil de traités.* The Dietrich'sche Verlagsbuchhandlung (Theodor Weicher) of Leipzig, the publishers of the *Recueil,* now announce that they will reprint the volumes that are out of print, and will be able to supply full sets. But individual volumes or parts of the set will be supplied only in exceptional cases.

Two contributions have been made recently to the rather scant literature dealing with Brazilian governmental and political questions. *Noções de Direito Administrativo Brasileiro,* by Alcides Cruz (Porto Alegre, Grundlach, 1910, pp. x, 240) is a brief summary of administrative powers and organization. A. G. de Aranjo Jorge's *Ensaios de Historia Diplomatica do Brasil no regimen Republicano* (1st series

1889–1902. Rio de Janeiro, Silva, 1912, pp. viii, 181) gives a full discussion of the diplomatic relations of Brazil from the founding of the republic to 1902; a volume now in press covers the period from 1902 to 1912.

Professor W. M. Geldart's *Elements of English Law* (New York, Henry Holt, Home University Library, pp. 256), is not comparable with the numerous small works which seek to make law easy, but is a careful and scholarly statement of the essential principles of English law. It should prove of value not only to the student of law but to every intelligent citizen as well.

Professor Frederick Parker Walton's *Historical Introduction to the Roman Law* has been issued in a second edition (Edinburg: William Green, 1912. pp. xvi, 391). The volume is scholarly, but is not too technical for the student. Its usefulness is increased by its frequent comparison of Roman legal principles with the principles of other legal systems.

In the Quarterly Journal of the University of North Dakota for April, 1912 (Vol. 2, No. 3), Prof. O. G. Libby has "A Sketch of the Early Political Parties in the United States." Of especial interest is the author's refutation of the frequently repeated statements that the election of 1800 was the triumph of the masses over the intelligent minority.

Vol. XIX, No. 3 (May-June, 1912) of the Revue générale de droit international public contains comments, by a number of the leading European scholars in international law, upon the proposal to establish an American Institute of International Law. The proposal, which has been made by Messrs. James Brown Scott and Alejandro Alvarez, was commented upon favorably by Prof. A. de Lapradelle in the January-February number of the same journal, in which also is published the text of the note in which the new organization was first proposed.

Henry Campbell Black's *Handbook of the Law of Judicial Precedents, or the Science of Case Law* (St. Paul, West Publishing Co., 1912, pp. xv, 768) fills a gap in our legal literature, and fills it, moreover, in a satisfactory manner. The author discusses with care, and usually with adequate citation of authorities, practically all questions that arise in the use of case law.

Edward Jenks' *Short History of English Law* (London, Methuen, 1912, pp. xxxv, 396) is a scholarly work dealing primarily with private law. The author touches lightly upon the development of the courts and the relation of the state towards its subjects because these matters have already been adequately treated elsewhere. Perhaps because of leaving aside to a large extent the development of the courts, Mr. Jenks' work nowhere presents as well rounded a picture of the important steps in English legal development as was given by Professor Maitland in his much briefer discussion. (Maitland's *Collected Papers,* II, 417–496).

Die norwegisch-schwedische Union, ihr Bestehen und ihre Lösung, (Breslau, Marcus, 1912) by Professors Anathon Aall and Nicholas Gjelsvik, traces the history of the Union from 1814, gives an account of its dissolution, and of the settlement of questions arising out of the dissolution. Much attention is devoted to the character of the union between Norway and Sweden, the authors asserting that the union was one between states which remained sovereign and each of which preserved all the attributes of independent states. In spite of evidence of bias the volume is of real scientific value.

Of the work by Dr. Adolph Gerber, *Niccolo Machiavelli; Die Handschriften, Ausgaben und Übersetzungen seiner Werke im 16. und 17. Jahrhundert* (Gotha: F. A. Perthes) two parts have appeared, one of text (pp. 102), a minute and painstaking study of the MSS. of Machiavelli, and the other comprising a series of excellent facsimiles intended to illustrate the various MSS. and early printed editions. While this study is one which will appeal primarily to bibliographers and philologists, it is a work of value to students of politics in that it throws light upon the use and misuse made of Machiavelli's writings during the 16th and 17th centuries, and therefore upon the growth of the Machiavelli tradition. Another part, a study of the early editions in Italian and in translation is in press.

A new (third) edition was issued in 1911 of *Les Questions actuelles de politique étrangère en Europe* (Bibliothèque d'Histoire Contemporaire. Paris, Alcan, pp. 322). The subjects discussed are the English foreign policy, German foreign policy, the question of Austria-Hungary, Macedonia and the Balkans, Russian internal affairs, and the relations of Russia with other European countries. The authors dealing with these questions are such well-known authorities as F. Charmes, A. Leroy-Beaulieu, R. Millet, A. Ribot, A. Vandal, R. de Caix, R. Henry, G. Louis-Jaray, R. Pinon, and A. Tardieu. The volume first appeared in 1907, and has now been carefully revised to 1911 by the authors. It constitutes a valuable contribution to the literature dealing with European external relations. M. Louis-Jaray's discussion of the Austro-Hungarian question is especially valuable.

In recent years there has been a great deal of discussion among Argentine scholars as to whether the Argentine government may be classed as presidential or parliamentary, and this discussion has its basis in the fact that the government in its operation does not conform to either of these two types. An important contribution has been made to this subject by a volume entitled *Función Constitucional de los Ministros* (Buenos Aires, 1911, pp. xxxv, 196), which forms volume two of the Biblioteca Argentina de Ciencias Politicas. In the volume are collected articles by a number of the leading students, most of the articles having previously appeared in the Revista Argentina de Ciencias Politicas. Of interest also in connection with this subject is Professor Adolfo Posada's *La República Argentina: Impressiones y Comentarios* (Madrid: Suarez, 1912. Pp. xi, 488). Professor Posada's volume is devoted mainly to general impressions of the country, but there is an interesting chapter on the Argentine constitution and the political régime. He is inclined to agree with those who regard the government as neither presidential nor parliamentary, but as possessing some of the characteristics of both types.

The Negro in Pennsylvania, Slavery-Servitude-Freedom, 1639–1861, (American Historical Association, Washington, 1911, pp. ix, 314) by Professor Edward R. Turner, was awarded the Justin Winsor Prize in American History for 1912, and is perhaps the best study that has appeared upon the negro in some one state. Students of government will find much of interest in the volume, and should be more particularly interested in the chapters on the legal status of the slave, the legal status of the free negro, the suffrage, and fugitive slaves. Students of constitutional history and constitutional law would have welcomed a fuller discussion of the case of *Prigg* v. *Pennsylvania.*

The sixth volume of the *Jahrbuch des oeffentlichen Rechts* has appeared (Tübingen; J. C. B. Mohr, 1912. Pp. viii, 536). In general plan the volume is similar to those of previous years, and the high standard of excellence of the earlier volumes is maintained. Of the reports upon recent legislation in the field of public law perhaps the most important are those upon the new constitutions of Alsace-Lorraine and Monaco, upon the Mecklenburg proposed constitution, upon the public law of Turkey from 1909 to 1911, and upon constitutional developments in China since 1901. Prof. Ernst Freund of the University of Chicago contributes an article upon the movement for uniform legislation in the United States.

With the appearance of volume three, O. Orban's *Le droit constitutionnel de la Belgique* is now complete. The third volume of this work (Liége, Dessain, 1911, pp. 622, xxix) is devoted almost entirely to constitutional guaranties, but there is a brief discussion of some of the principles of Belgian administrative law. The section devoted to sanctions of constitutional guaranties should be of interest to American students. The author urges the adoption in Belgium of the principle of judicial power to declare laws unconstitutional, the legislature having power to initiate a constitutional amendment if it is dissatisfied with the judicial decision; he thinks that this would be more satisfactory in Belgium than in the United States, because of the less cumbersome machinery provided for the amendment of the Belgian constitution. His discussion suggests the movement for easier methods of amending constitutions in this country, a movement which in recent months has centered around the proposal for the "recall of judicial decisions."

Attitude of American Courts in Labor Cases, by Professor George Gorham Groat (Columbia University Studies in History, Economics and Public Law, Vol. 42, pp. ix, 400) is neither a statement nor a criticism of the general principles of law applied by the courts in labor cases. The purpose of the volume seems to be mainly to show the mental attitude of judges, by means of the quotation of views expressed in judicial decisions, irrespective of whether the views are obiter or not, and these views are arranged by subjects but without much analysis or classification; the subjects of employers' liability and workmen's compensation are not dealt with, but practically all other labor subjects are covered. Quotations from decided cases, even though they may be dicta, are of value as showing the judicial point of view, but where subjects have been so much discussed elsewhere and where the judicial attitude has been called attention to so frequently, it is doubtful whether a work of this sort can possess any great value. We need badly a careful analysis and criticism of judicial decisions in labor cases, and it is to be regretted that the author did not attempt something of this sort.

In *The Progress of Japan, 1853–1871* (Oxford, Clarendon Press, 1911, pp. 323), Mr. J. H. Gubbins, lecturer in Japanese in the University of Oxford, has given a clear and satisfactory account of Japanese development during this formative period. The volume is devoted almost entirely to political events, and takes the subject down to the abolition of feudalism in 1871. Appendices covering nearly a hundred pages give the text of all important documents. This volume and Uyehara's *Political Development of Japan, 1867–1909,* afford English readers a satisfactory treatment of modern political developments in Japan. Of an entirely different character is Robert P. Porter's *The Full Recognition of Japan* (Oxford University Press, 1911, pp. x, 789). Mr. Porter gives some attention to the political development of Japan, but the volume is primarily devoted to a survey of present economic and social conditions.

Various countries of Latin-America have in recent years issued revised collections of their international treaties. The latest and most complete collection of this character has recently been published by the Argentine Republic in eleven volumes: *Tratados, convenciones, protocoles, actos y acuerdos internacionales.* (Publicación oficial, Buenos Aires, J. A. Alsina, 1911–12.)

This extensive work includes not only all the international treaties and conventions of Argentine with foreign countries, but also the protocols of armistice, conventions of international congresses, adhesions of Argentine to international agreements, arbitral decisions to which Argentine has been a party, and the interstate or inter-provincial agreements of the Argentine Republic. The last volume is of particular interest to students of colonial history in that it contains the great historical documents, with the ordinances, decrees and cedulas of the Spanish Crown and the conquistadores beginning with the Papal Bull of Alexander the Sixth in 1493 and coming down to the independence of Argentine in 1810. It is unquestionably the most pretentious collection of international documents published by any country of Latin-America and will be invaluable to the student of the diplomatic history and international relations of the Argentine Republic.

Salvador has during the last year likewise published a new edition of its treaties in three small volumes: *Pactos internacionales de el Salvador* by P. Abraham Ramirez (San Salvador, Tip. La Union, 1910–1911). The books make a poor appearance and the workmanship is inferior, both in editing and printing.

The Stanley Committee of the House of Representatives made its report on the United States Steel Corporation in August (62 Cong., 2d sess., House Report 1127). The majority report presents an elaborate and perhaps not always correct account of the development of the Steel Corporation. The majority of the committee recommend a bill strengthening the Sherman anti-trust law and defining what shall constitute unreasonable restraint of trade; the burden of proving reasonableness of combinations in restraint of trade is to be upon the combination, and a rebuttable presumption of unreasonableness is to arise in case of any combination controlling more than thirty per cent. of any industry. Under this bill it is planned that the control of corporations shall remain with the courts, and judicial power as to this matter is much expanded. In its general characteristics the bill is similar to the one submitted some time ago by Senator LaFollette. The minority of the committee agrees with the majority bill, but considers that further control through a permanent administrative commission is necessary. Its views agree in large part with those presented by the Cummins bill and by Dr. Van Hise's recent book.

Concentration and Control: A Solution of the Trust Problem in the United States (New York, Macmillan, 1912, p. xiii, 281) is a sane and well balanced book. The volume presents what is perhaps the best brief statement of the movements toward concentration in the industrial world. The author's discussion of the place of competition in our present business organization is especially valuable. The chapter devoted to the laws regarding co-operation is the weakest of the book. But Dr. Van Hise has sufficiently mastered the legal situation to make his positive suggestions for the future of great value. He urges the necessity of permanent commissions to control large industries in a manner similar to that already developed for railways and other public service corporations. While Dr. Van Hise has said little that is new, his volume co-ordinates the whole subject in a useful manner, and should be in the hands of every person interested in the solution of the trust problem.

In a brief volume entitled *Neutralization* (Oxford University Press, 1911, pp. 91), Mr. C. F. Wicker analyzes the elements contained in the condition of permanent neutrality, collects the principal instances of neutralization, narrating the salient facts of each, and discusses the effects of neutralization with regard to fortifications, the right of a neutralized state to form alliances, the maintenance of permanent neutrality, the possession of colonies, and the formation of tariff unions. With respect to the Panama Canal, the author holds that its condition is a compromise between neutralization and complete American control. The main proposition of the book, however, is found in the last chapter on "The United States and Neutralization," reprinted from the *Atlantic Monthly*, in which the author suggests further neutralization as a means towards disarmament. He advocates the neutralization of the Philippines as the best solution of the question as to the proper disposition of the islands, although he admits that such a solution would compel the United States to forego whatever special commercial advantages in the islands she now enjoys. This plan undoubtedly contains some attractive features, but it is to be feared that the author is too sanguine in supposing that the neutralization of the Philippines would insure the permanent peace of the Pacific, and in suggesting neutralization as a panacea for the disturbances of South America.

A more extended discussion of the subject of neutralization is contained in Emmanual Descamp's *L'État neutre á titre permanent. Étude de droit international comparé* (Paris, 1912, Libraire du Recueil Sirey). The author, whose work on the neutrality of Belgium is already well-known, gives an historical account of the several cases of neutralization, and discusses the position of permanent neutralization in international law.

In *L'Annexion du Congo à la Belgique et le droit international,* (Brussels, Van Fleteren, 1911) Dr. Roger Brunet gives an historical account of the movement for annexation, and discusses fully the international aspects of the question. The relations between Belgium and the Congo state before annexation are also discussed.

Social Evolution and Political Theory is the title of a volume containing the eight lectures delivered on the Beer Foundation at Columbia University, in April, 1911, by Leonard T. Hobhouse, Professor of Sociology in the University of London (The Columbia University Press, New York, 1911, pp. 218). For the most part the lectures fall within the domain of sociology, and deal with such subjects as the meaning and evolution of progress, eugenics, social harmony and the social mind, and social morphology. There are several essays, however, of more immediate interest to students of political theory. One of these traces the growth of the state from its beginning as a primitive group. In another, entitled "Social Philosophy and Modern Problems" the author reviews in a very general way the controversy regarding the sphere of the state and the limits of state action. It is generally recognised, he says, that the sphere of public responsibility has been enlarged, and has to be still further enlarged. And, he also adds, the old reluctance to assign new functions to the state is a diminishing quantity as is shown by the numerous recent examples of socialistic legislation in England. In a chapter entitled "The individual and the state" he develops the theory that the ideal society is one of co-operation, and that the best organized society will be that in which the co-operation is most perfect and complete. A pronounced adversary of the *laissez faire* doctrine, he characterizes as false the antithesis between liberty and restraint and asserts, what is obvious to every thinking man, that the greater the freedom of the strong man, the less the freedom of the weaker.

Sir Roland K. Wilson in a book entitled *The Province of the State* (London, P. S. King and Son, 1911, pp. xvii, 321) attempts to define the limits of legitimate state action. He conceives the state merely as a "justice enforcing association," and condemns all activities of a socialistic character. He defends the theories of the *laissez faire* writers like Spencer and the other Victorian radicals, and maintains that their ideas never had a fair trial. The assertion of the socialist writers, on the contrary, that those views were once given a fair trial and found unsatisfactory, he pronounces a veritable myth. The only legitimate state, we are told, is the libertarian state, that is, one reduced to its lowest terms, and the only valid reason for maintaining it is the certainty of continued strife and triumphant injustice, if every man were a judge in his own case. Many of the activities undertaken by modern states should be left to private enterprise. Concerning public education he remarks, "of all the policies, the most indefensible is that of forcing everybody to pay for, and forcing all children into, schools in which all debatable topics are tabooed" (108). State provision for elementary education he says is bad for morals and liberty, and state provision for secondary education is several degrees worse (103). Education of children is the business of their parents, not of the state. Nevertheless, he admits that it is the business of the state to see that the parental duty is properly discharged, to protect every child against both parental tyranny and parental neglect, and if necessary, to appoint a guardian to watch over him (264).

He condemns state support of religious worship (119), state aid to science and art (122), state appropriations for museums and libraries (127), pensions for authors (128), the granting of titles and honors except to those in the service of the state, liquor prohibition laws (157), state aid to public health (174), compulsory vaccination laws (though he justifies compulsory notification and isolation in the case of contagious disease), public medical assistance (187), medical inspection of school children (190), favors the abolition of the postal monopoly (200), and the separation of church and state in England and Scotland (202), and condemns old age pensions, state poor relief, workingmen's insurance and all the other more or less socialistic undertakings of modern states.

Fifty million pounds annually could be saved by the state on four or five of these items (198). The proper and indispensable work of the state, he adds, is now being carried on under the heavy disadvantage of our ever growing financial drain for extraneous objects, and immense possibilities of further national progress now open to us will be largely missed unless something is done to check the growing superstition in regard to the mere omnipotence of the state (310). On the whole, the case for the *laissez faire* theorists is well stated but it is far from convincing in this day when universal experience points in the other direction.

Second Chambers in Practice is the title of a small volume containing the papers of the Rainbow Circle of London for the year 1910–1911 (P. S. King and Son, 1911, pp. 164). There are nine essays in all, by various writers, dealing with the upper legislative chambers of the principal American and European States, and the English self-governing colonies. The opinions expressed are, in general, unfavorable to the bicameral system. Second chambers, we are told, are "a late efforescence of civilization." Where there is a federation the utility of an upper chamber is admitted, but in a unitary state it is declared to be the reverse of useful, and many colonial states are finding this out. Second chambers are in practice constant sources of friction and delay, and they rarely serve as safeguards, since they tend to become a "reflex" of the lower house. The French Senate is described as a "manufactured article" a *lusus naturae* and "it is almost impossible to find any theoretical justification of it." The Swiss Council of States, however, has more *raison d'être,* since Switzerland is a federal state. The German Bundesrath is characterized as the strongest upper chamber in the world, and the United States Senate as an anomaly, and the "worst element in the American Constitution." Its supremacy over the House of Representatives is declared to be "illogical, and injurious." The British House of Lords in its present form, we are told, should be abolished, and reconstructed on the Norwegian principle.[1]

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[1] In the preparation of book notes assistance has been received from Mr. E. M. Borchard and from Professors Jesse S. Reeves, J. W. Garner, and J. M. Mathews.

CURRENT MUNICIPAL AFFAIRS

W. B. MUNRO

The voters of New Orleans at a recent special election adopted by an overwhelming majority the new commission charter which passed the Louisiana legislature at its last session. The vote in favor of adoption was 23,900 to 2,119. The new charter provides for government by a mayor and four commissioners elected at large for a four-year term and makes provision for the use of the initiative and referendum. At the regular November election the voters of the state will be asked to pass upon a constitutional amendment which will render possible the use of the recall with reference to elective city officials. New Orleans, with a population of about 340,000, is now the largest city governed under the commission plan. The next largest is St. Paul, and the third in point of importance is Oakland, Cal.

The system of commission government adopted by St. Paul a few months ago differs somewhat from the New Orleans plan. In St. Paul a mayor, six commissioners, and a city comptroller are elected every two years. The comptroller, however, is not a member of the council. A striking feature of the St. Paul system is that the comptroller prepares the annual budget for submission to the council. A relic of the old municipal system is retained in the provision giving the mayor the veto power over the council's acts. The mayor, however, presides at the council's meetings and is a member of it, thus making the commission a body of seven members, instead of the customary five. An interesting feature of the new charter is the provision enabling five of the seven commissioners to remove any elective or appointive official of city administration.

Among important books on city government published during the last few months, one of the most striking is Henry Bruère's *The New City Government*. This volume represents the results of a detailed survey made under Mr. Bruère's supervision, of ten American cities which have been operating under the commission type of government. Data from all of these cities appears to have been gathered with considerable care and an endeavor has been made to discover the extent to which the new frame of government has increased the efficiency of municipal departments. The author points out various instances in which the new type of government has not measured up to expectations because of the common failure of commission charters to give adequate attention to what may be called the functioning mechanism of city administration. A more extended notice of the book will appear in a later issue of the REVIEW.

Prof. John E. Macy of the Boston University Law School has published through Messrs. Little, Brown & Co., a volume entitled *Selection of Cases on Municipal or Public Corporations* (Boston, 1911). The cases are arranged in eleven chapters which deal with the following topics: definition and nature, creation, powers, public easements, public services, limitations on municipal discretion, municipal bodies, contractual liabilities, liabilities for torts, rights and remedies of creditors and state control of municipal affairs. On the whole the decisions have been chosen with good judgment although one notes some rather important omissions, as, for example, the well-known decision in *Hitchcock* v. *Galveston* (96 U. S. 341) dealing with the delegation of powers by higher authorities to lower, and the oft-quoted case of *Hill* v. *Boston* (122 Mass. 344). On the other hand, there are many decisions embodied in this book on such matters as the rules of procedure in city councils and the limits of state control over municipalities which have not yet found a place in compilations of this type. The fact that the author has in mind the situation of Massachusetts cities particularly, will no doubt explain the absence of cases dealing with such topics as constitutional limitations on special legislation for cities, on the classification of cities, and on many questions connected with the system of home-rule charters. Nevertheless, the book will prove of great value to students of municipal law.

Prof. Joseph H. Beale of the Harvard Law School has also issued a volume of decisions entitled *Selection of Cases on Municipal Corporations* (Cambridge, 1911). This compilation includes practically all the decisions which were brought together some years ago in a smaller collection edited by Prof. Jeremiah Smith. This latter volume performed valued service in its time and was widely used in law school instruction. With the development of the subject through the judicial decisions of the last ten years, however, it became somewhat out of date, and Professor Beale has now added a large number of cases chosen from among the extensive list available. To some extent this volume and that of Professor Macy mentioned in the preceding paragraph, cover the same field, but Professor Beale's collection contains a more extensive list of decisions relating to municipal powers and liabilities.

Interesting pamphlets recently issued are *Home Rule for Cities,* by Robert S. Binkerd, published by the Municipal Government Association of New York State (11 pp.); *Paying the Bills for City Planning,* by Nelson P. Lewis, chief engineer of the New York Board of Estimate and Apportionment; and *Housing Conditions in Fall River,* by C. Aronovici, published by the Associated Charities' Housing Committee of Fall River.

The Social Research Council of Boston has issued a preliminary list of recent social investigations in Greater Boston. The editor of the bulletin is Dr. R. F. Foerster, director of the Council, and the publication includes a statement of all investigations now being made by any betterment organization in the metropolitan district of Boston.

The Division of Recreation of the Russell Sage Foundation has printed a *Recreation Bibliography* which contains the list of books, reports and review articles dealing with the subject indicated by its title.

The May number of the *Annals of the American Academy of Political and Social Science* is devoted to the subject of Efficiency in City Government. The following is a list of the individual contribution to the issue: "Efficiency in City Government," by Henry Bruère, Joint Director of the New York Bureau of Municipal Research and Training School for Public Service; "The Need for Co-ordinating Municipal, State and National Activities," by Frederick A. Cleveland, Ph.D., of the President's Commission on Economy and Efficiency; "Efficiency through Accounting," by William A. Prendergast, Comptroller of the City of New York; "Results Obtainable through Reorganization of Accounting Methods," by B. J. Taussig, Comptroller of the City of St. Louis; "The Application to a Municipality of Modern Methods of Accounting and Reporting," by John M. Walton, Comptroller of the City of Philadelphia; "Efficiency in Child Saving," by Joseph S. Neff, A.M., M.D., Director of Public Health and Charities, Philadelphia; "Efficiency in the Fiscal Operations of Cities," by Edmund D. Fisher, President of the National Association of Comptrollers and Accounting Officers, and Deputy Comptroller of the City of New York; "Economy and Efficiency in the Department of Water Supply, Gas and Electricity of New York City," by J. Leggett Pultz, in charge of the Bureau of Economy and Efficiency Department of Water Supply, Gas and Electricity, New York City; "Efficiency in Water Revenue Collection," by J. H. Clowes, of the New York Bureau of Municipal Research; "Securing Efficiency through a Standard Testing Laboratory," by Otto H. Klein, Director, Standard Testing Laboratory, City of New York; "The Problem of Securing Efficiency in Municipal Labor," by Benjamin F. Welton, Engineer in Charge of the Bureau of Efficiency, Office of the Commissioner of Accounts, New York City; "Efficiency in Highway Administration with Special Reference to Pavements," by E. P. Goodrich, Consulting Engineer, Borough of Manhattan, New York City, and W. B. Holton, Jr., Member of the Staff of the Bureau of Municipal Research, New York City; "Standardization of Specifications for Public Works," by William H. Connell, Chief of the Bureau of Highways and Street Cleaning, Philadelphia; "Efficiency in Budget Making," by Herbert R. Sands, C.P.A., and Fred W. Lindars, C.P.A., of the Bureau of Municipal Research, New York City; "Efficiency Value of the Budget Exhibit," by J. Harold Braddock, New York Bureau of Municipal Research; "Attaining Efficiency in City School Systems," by Frank P. Bachman, Ph.D., of the Committee on School Inquiry, New York; "Effective Charity Administration," by L. A. Halbert, General Superintendent of the Board of Public Welfare, Kansas City, Mo.; "Efficiency in County Government," by Otho Grandford Cartwright, Director of Research of the Westchester County Research Bureau; "A Proposed Municipal Administrative Code for New Jersey Cities," by D. O. Decker, New York Bureau of Municipal Research; "Efficient Supervision of Weights and Measures," by Fritz Reichmann, Ph.D., Superintendent of Weights and Measures, State of New York; "Securing Efficient Administration under the Commission Plan," by Frederick W. Donnelly, Mayor of Trenton, New Jersey; "The New York Bureau of Municipal Research," by George B. Hopkins, Trustee of the Bureau; "The Outlook for Municipal Efficiency in Philadelphia," by Jesse D. Burks, Ph.D., Director, Bureau of Municipal Research; "The Cincinnati Bureau of Municipal Research," by Rufus E. Miles, Director; "The Milwaukee Bureau of Economy and Efficiency," by J. E. Treleven, Secretary of the Bureau; "Investigations as a Means of Securing Administrative Efficiency," by Charles E. Merriam, Professor of

Political Science, University of Chicago; "A National Fund for Promoting Efficient Municipal Accounting and Reporting," by U. L. Leonhauser, C.P.A., Secretary of the Fund; "Training Men and Women for Public Service," by William H. Allen, Ph.D., Joint Director of the New York Bureau of Municipal Research and the Training School for Public Service.

The May issue of *Special Libraries* contains a *Check List of References on City Planning.* The publication is a comprehensive bibliography of 125 pages and the work of preparing the data for it was performed by the Library of Congress and the Department of Landscape Architecture at Harvard University. The purpose of the bibliography is to meet an immediate demand for references on this subject, to show the extent of easily accessible material, and to disclose other material not included in the list, so that when the publication reaches another edition it may approach a definitive bibliography of the subject.

Wacker's *Manual of the Plan of Chicago*, edited by Walter D. Moody, Managing Director of the Chicago Plan Commission, is a publication designed to show school children the progress of city building in ancient, mediæval and modern times. More than one half the book is devoted to this general subject and is profusely illustrated by photographic views. The latter part of the book deals particularly with the proposed improvements in the street, park and public buildings' arrangements of Chicago.

The Census Bureau has recently published a bulletin giving the population of the various metropolitan districts of the United States. This publication is of great importance to students of municipal problems, because in more senses than one the populations of the metropolitan district represent with greater accuracy than the municipal figure the relative importance of the city as an economic center and indicate more clearly the nature of the problem with which the administrative authorities have to contend. In general, the Census Bureau has included within each metropolitan district all territory located within ten miles from the boundaries of that city which forms the district's nucleus. Under this method of grouping population the figure for metropolitan New York is 6,474,568; for Chicago 2,466,921; for Philadelphia 1,972,342; for Boston 1,520,470; for Pittsburgh

1,442,855; and for St. Louis 828,733. The cities which chiefly gain through this method of grouping population are Boston and Pittsburgh. The population of municipal Boston is only 670,585, while that of municipal Pittsburgh is only 533,905. From many points of view, the comparison of urban populations on this basis is more profitable than on any other, since municipal boundaries are wholly arbitrary. Some cities like Chicago have already taken in nearly all the territory included within their metropolitan areas; others like Boston contain within their municipal limits less than one half of such territory.

The September number of the *National Municipal Review* contains various papers read at the National Municipal League's annual meeting in Los Angeles last summer, as well as contributed articles. Among these papers and articles are "Expert City Management" by Hon. William Dudley Foulke, "Municipal Home Rule in California" by Prof. Thomas H. Reed, "The Working of the Initiative, Referendum and Recall" by Dr. John R. Haynes, "Chicago and Cleveland's Street Railway Settlement" by Dr. Delos F. Wilcox, and a discussion of the Los Angeles Charter by John J. Hamilton.

An interesting report on windowless rooms in tenement houses has been made by Commissioner John J. Murphy of the New York Tenement House Department. The report declares that there are at the present time more than fifty thousand rooms in Greater New York tenement houses which either have no windows at all or such small ones that they are of no service. While this number is still astonishingly large, in view of state legislation on the matter, it represents a great improvement over conditions as they existed two or three years ago. In 1909 the number of such rooms exceeded 360,000, but through steady pressure upon the landlords, the situation has been so much bettered that by the end of 1913, Commissioner Murphy hopes to have the windowless room completely eliminated.

The State Food Investigating Commission of New York through its Committee on Control over Market Prices and Costs has published a report in which it recommends that the various cities of the state secure amendments to their charters providing for the establishment of a Department of Markets in every municipality of the state. The report recommends that this new department shall be given charge of all sanitary and economic questions connected with the city's food supply and that it shall publish a daily list of prices. The report, however, does not advocate direct city control of marketing. The framers of the report estimate that, if their detailed plans were adopted, the saving to New York City alone would amount to $60,000,000 per year.

All but eight of the forty-two amendments to the constitution of Ohio were ratified by the voters at the special election held on September 3. Among the more important amendments adopted were those providing for the initiative and referendum on future state legislation, for the use of direct primaries, for municipal home-rule charters, for placing all appointive officers in the service of the state, the counties and the cities of Ohio under civil service regulation, and for the taxation of state and municipal bonds. For the student of municipal government the two most important of these amendments are those relating to home-rule charters and civil service appointment. Under the home-rule amendment three methods of securing a city charter are made possible. In the first place, a city may elect a charter commission of fifteen members to draft a charter and submit it to the people for their acceptance or rejection. In the second place, the legislature of Ohio may enact the charter and this will come into force whenever the voters of any city accept it by a majority. In the third place, any city may decide by popular vote to be governed under the terms of the present municipal code. A number of cities are already considering the advisability of establishing charter commissions, among them Cleveland and Dayton.

The legislature of Minnesota at a special session held in June enacted three laws which have been supported by the municipal reform element for several years, namely, an act for the prevention and punishment of corrupt practices at election, legislation providing for a statewide primary, and provision for removing party designations from the municipal ballot in the largest cities of the state. The three cities concerned in this last-named arrangement are Minneapolis, St. Paul and Duluth. It is regarded as probable that at the next session of the legislature a successful effort will be made to secure the enactment of a civil service law applying to all administrative officials employed by the state and by the larger cities.

The Department of Industrial Research at the University of Pittsburgh has begun an investigation of the smoke nuisance and the means of mitigating it. A comprehensive study of the problem in all its phases is being carried on by twenty-five specialists, of whom seven are giving their entire time to the work. The investigation will cover such matters as the effect of smoke on the atmosphere, on plant life and on physical structures, as well as upon public health. An examination will be made of every known mechanical device for abating the smoke nuisance and the merits of such devices will be given a thorough test. Likewise, there will be a compilation of all important state laws and city ordinances relating to the smoke problem and an attempt will be made to bring together trustworthy data concerning the degree of strictness with which these laws are enforced.

Two new centers of information on municipal matters have recently been established in Chicago. One is a civics room in the Public Library. In this room all the library's material bearing directly on municipal affairs (such as charters, ordinances, reports and statistical compilation) have been brought together and systematically arranged. The establishment of the civics room is intended to be of especial value to citizens interested in local civic progress.

The other center is the Bureau of Information and Publicity, provision for the establishment of which was made by the city council some months ago. This new bureau will have a regular permanent staff, headed by a commissioner of information and publicity. This official will be assisted by statisticians and special investigators. The city's Bureau of Statistics will be absorbed by the new department and will serve as the nucleus of the latter. The ordinance establishing the Bureau of Information and Publicity authorizes it to collect the laws and ordinances of other states and cities and all municipal reports that are worthy of preservation. All this material is to be indexed and members of the city council are to be enabled to call for and obtain information on any branch of municipal government. The bureau is also required to keep on file all reports published by the city of Chicago, so that it will become, in the course of time, a sort of official depository. It is interesting to note that all officials of the bureau, from the commissioner down, are placed under the operation of the civil service laws.

The Bureau of Information and Publicity, which is a strictly official establishment, must not be confused with the Chicago Bureau of Public Efficiency, an institution supported by private contributions, which has for its chief purpose the investigation of work done by the city departments.

The first permanent municipal museum to be established in any city either of this country or abroad, has been provided for by New York City. The old building at the corner of Twenty-third Street and Lexington Avenue, formerly occupied by the College of the City of New York, is to be utilized in part for this purpose. The nucleus of the museum will be the municipal budget exhibit which the New York Bureau of Municipal Research was instrumental in having gathered together a few years ago. This exhibit will be supplemented by new accessions from time to time until it affords concrete illustration of every municipal activity great or small. The museum will be, in a sense, part of the instructional machinery of the College of the City of New York, and the trustees of this institution have already started to develop courses of instruction in municipal government with a view to utilizing fully the resources of the museum in practical instruction. These courses are under the immediate charge of Prof. H. B. Woolston.

Following the example of New York, a municipal budget exhibit was held in Cincinnati during the first two weeks of October. The material was brought together under the superintendence of officials sent to Cincinnati by the New York Bureau of Municipal Research. A somewhat similar exhibition covering a more specialized field, however, was held about the same time in Philadelphia under the auspices of the Department of Public Works. The exhibit was of a popular nature and was confined mainly to matters connected with the city's water supply, particularly illustrating the use and abuse of water by consumers. The per capita waste of city water in Philadelphia is believed to be larger than that in any other city of the country, and it was hoped that by means of the exhibit a realization of popular extravagance could be brought home to the voters of the city.

The principle of excess condemnation has received an emphatic endorsement in the adoption of the Ohio constitutional amendment permitting cities to acquire for public improvement more land than is actually needed for such undertaking. The Ohio amendment goes somewhat further than similar provisions in other states in that it permits cities a wide latitude in determining the amount of land to be acquired.

A year or two ago mention was made in the REVIEW of a novel experiment inaugurated by the town of Staunton, Va., in the way of employing a municipal manager. The precedent is now to be followed by the town of Norwood, Mass., which voted at its last town meeting to employ a town manager who will have charge of all the business affairs of the municipality and will handle all the town's expenditures. He will be town engineer, superintendent of public works, director of the water supply and lighting system, as well as supervisor of all work performed on the town highways.

The Municipal Assembly of St. Louis has passed an ordinance providing for an amendment to the city charter which will permit the use of the initiative and referendum in municipal affairs. This ordinance will be submitted to the voters of the city on November 5. Meanwhile a conference composed of delegates from twenty-one civic and business organizations of St. Louis has voted that in its opinion an entirely new charter is needed.

In the *Schweizerisches Zentralblatt für Staats-und Gemeinde-Verwaltung* (vol. XIII, 1912, Nos. 2, 4, and 7), Dr. Eugen Grossmann has published a series of articles on "Swiss Municipal Administration during 1910." These articles give the best available summary of current municipal affairs in Switzerland, and Doctor Grossmann plans to develop this work later into a Swiss Municiapl Year-Book.

One of the most recent examples of Swiss communal organization is afforded by the new *Gemeinde-Reglement* of the city of Herisau, adopted during 1910. The inhabitants rejected a scheme to center the administration of the city in the hands of three paid experts, and retained its former council of twenty-one members. An interesting feature is the provision of a fine of two francs for those not attending the "town-meeting."

The Housing of the Working Classes Bill, presented to Parliament last spring, which was practically annihilated on its second reading, contained three chief provisions. A special housing bureau was to be set up, as a separate department of the Local Government Board; the central authorities were to be given power to take over the duties of local authorities that proved inactive or negligent; and an annual grant from the national exchequer of £500,000 was to be expended on improved housing. None of these features was retained by the Standing Committee that amended the Bill.

The operation of the Housing and Town Planning Act of 1909 may be studied in the current number of the *Town-Planning Review* and the *Surveying and Housing World.* The studies of Sheffield and Middlesbrough in the former journal, and the reports of the National Housing and Town Planning Council Conferences in the latter, are especially valuable, as showing in detail the actual workings of the Act.

Among recent publications in Europe, in the general field of municipal affairs, may be mentioned: Douglas Knoop, *Principles and Methods of Municipal Trading* (London, Macmillan, 1912, pp. xvii, 409); Mrs. Bernard Bosanquet, *Social Conditions in Provincial [English] Towns* (London, Macmillan, 1912, pp. 82); Léon Morgand, *La Loi Municipale* (8th edition, 1911, 2 vols.); *Annuario Statistico delle Citta Italiane* (Anno iv, 1911–1912, Florence, 1912); Cami No Corradini, *L'Istruzione Primaria e Popolare in Italia* (Turin, 1911); G. Wolf, *Die Schöne deutsche Stadt, Mitteldeutschland,* and J. Baum, *Die Schöne deutsche Stadt. Süddeutschland* (Munich, 1912, with many illustrations); *Die deutsche Gartenstadtbewegung* (Berlin, 1911); O. Munsterberg, *Die Bodenpolitik Danzigs* (Danzig, 1911, pp. 61 with map).

A series of articles on City Government in Europe, by Frederic C. Howe, is appearing in the *Outlook*, under the general title of *City Sense.* These articles are the result of Mr. Howe's study of municipal conditions on the trip arranged by the Boston Chamber of Commerce in the summer of 1911.

Scribner's Magazine for October contains two intersting articles on the problem of the modern railroad station, with a large number of illustrations of railroad stations in America and abroad. The importance of the terminal, from the point of view of city-planning is particularly well brought out.

Of perhaps even greater interest to students of municipal problems is the series of articles in *Scribner's* for July, on the "New Suburb."

BOOK REVIEWS.

Responsible Government in the Dominions. By A. BERRIEDALE KEITH. Three volumes. (Clarendon Press, Oxford, 1912.)

In the spring of 1912 Mr. Keith reissued his work on Responsible Government in the Dominions of Great Britain; published first in 1909 in one small volume, it now appears in three large volumes, covering over 1500 pages. The first work of this author was already well known to persons interested in the public and constitutional law of Great Britain, as a good and reliable text book. The new edition, covering the same ground in a much more detailed way, will be still more valuable and useful to the student.

It is to be highly recommended as a text book, as well as a reference book; it certainly surpasses all the previous works on the same subject and is much more up to date than, for example, the classical work of A. Todd. Thus it is sure to take a permanent place in all libraries of public law.

Yet the student of public law must also be warned in some respects of the shortcomings of this work. The new edition is certainly heavy reading, much more difficult to peruse, than was the first volume of 1909. The author has added much important and interesting data and yet one cannot, but feel, that there is too much padding in the work and that it is too diluted and could be condensed to great advantage. In chapter after chapter the reader will find dozens of pages given up to the reprint of documents, despatches, correspondence, etc., which can be easily found in Blue Books in any library; a simple footnote would have been quite sufficient; this is the more evident, as in the great majority of cases the author does not draw any conclusions of his own, leaving this to be done by the reader. In this connection another shortcoming must be mentioned. After minutely surveying in the first three parts the different institutions of the Dominions, the position of Governors, of Parliaments, etc., the author comes back in Part IV to "the Federations and Unions," namely to exactly the same subjects, and has to retrace his steps, and repeat all the same facts and details, which it would have been much better to collect in one place.

These repetitions are due to the deficient method of treating the subject; the author ought to have fused either the first Parts in Part IV, or vice versa. This coupled with the already mentioned love of the author for needless quotations makes the whole work much heavier than it would otherwise be.

Another methodological drawback is to be found in the system of the chapters themselves; the chapter usually begins with a few short remarks of the author and some of his own conclusions; then come the history of the case and the endless quotations; and, finally, the reader would expect a summary, but finds a period. A reversal of this sytem, would make the book much more intelligible to the student. Defects in method are, as a rule, not very important; these however in a work containing much valuable material, are, to say the least, disappointing.

Let us now see how matters stand with the subject of this treatise. Mr. Keith gives very interesting and trustworthy information concerning the history of the Dominions; this is by far the most valuable part of his volumes; the classical work of A. Todd is out of date; the student of English constitutional and public law has long needed newer and fresher data. Now he has at his disposal all the necessary detailed infomation concerning any special question in which he may be interested. Part I (Introductory) gives the reader a short account of the history of Responsible Government in the Dominions; Part II deals with the position of the Executive Government, the governor and his ministers, as well as the cabinet system; Part III is devoted to the Parliaments, their rights and privileges, their modes of working. The student will find here abundant material and reliable data, as well as necessary sources of information and bibliographical notes.

So far, so good. Matters however change when we come to the theory of the cases. Here, first of all, is noticeable a spirit of Imperialistic partisanship which cannot be easily explained. Secondly, we have to point out the disagreeable and overbearing tone of the author, often quite unjustified by his own facts in cases when he deals with other men's theories. Mr. Tarring, for instance, fares badly on page 114, vol. I; this is likewise the case with many others, Justice Higinbotham included; the names and *renommé* of these authors, with whom Mr. Keith has to deal, would, it seems, deserve more cautious treatment. Possibly an explanation may be found in the fact that the men our author attacks may nearly all be classed as political opponents to his imperialistic ideas. However, his unjustifiable treatment of them cannot but undermine the value of his theoretical work.

We should also like to see in some places clearer proofs and statements concerning the author's own theories. For example, he is certainly right in asserting the dual position of the governor as head of the Dominion executive power and as an Imperial officer acting in Imperial interests (p. 173, vol. I); this point however could be much better and more closely defined when the author enters into polemics with Mr. Higinbotham and Mr. Blake; we do not think he is right, on the other hand, when he denies (p. 171) any possible parallel between a governor and a constitutional monarch; first, one does not know what type of sovereign the author has in view and can only surmise that it is the English monarch, and secondly, just such a resemblance in the position of these two organs of State is one the of most striking instances in English law of its influence and its spread outside of England proper; in minor details their positions certainly differ, but broadly speaking they have much in common.

The political ideals of the author come out clearly in another connection when he treats the position of the governor as an "Imperial officer" and his relations with his ministers. Here Mr. Keith asserts that it would be impossible to enforce the principle of full (?) ministerial responsibility, as the present constitution (?) of the Empire would in that case have to be abandoned (p. 288, vol. I). It is not clear (notwithstanding his assertion to the contrary!) where, and what limitations to ministerial responsibility could exist; in Canada, as well as in the Commonwealth no government would for a moment consider such a theory of limitations, which would be looked at as existing only in imagination. The author continues by giving an example of California and says that it is the duty (?) of the Dominions not to adopt any such policy; one does not quite know what sort of duty Mr. Keith has in mind, moral or legal. He forgets evidently that the unity of the United States Federation has nowadays become much stronger than the unity of the British Empire and yet this does not prevent a "Californian policy"; there can exist an interest of the Dominions not to adopt any such policy and we firmly believe there does exist such an interest, which tightens the bonds of Empire, but from a legal point of view one cannot find any "duty." This is proved in the clearest possible way by Sir W. Laurier's idea of helping the

Mother-country in times of war, which goes much further than anything Californian statesmen ever dared contemplate.

In the next chapter (VII) which treats the question of the cabinet system the reader will find a noticeable contradiction in the assertion (p. 301) that the number of experiments as regards the following of English conventions in this matter were "very small and have been unimpotant in actual result," as the author himself on the following pages gives a considerable number of examples of very important changes and of their consequences. Notably on pages 302, 306, 310. If the author had chosen another method, giving the examples first and the conclusions afterward, such hasty assertions could have been easily avoided.

One must say that the whole work shows signs of haste, which is the reason why much of the matter treated in it remains raw and undigested.

Chapter III (Part III) dealing with the repugnancy of colonial laws is most disappointing, as one cannot find any conclusions in it at all; and yet this is one of the very important questions of public law of the contemporary British Empire; the old act of 1865 can hardly apply to many modern cases, but no new law and no new theory of law has yet been formulated and the student is left quite at a loss, not knowing how the new situation has to be met or how the old law has now to be interpreted. Neither does this chapter give any whole picture of the historical development of the question, which is one of the most interesting ones in English constitutional law.

In Volume II we find the end of Part III and Part IV which latter gives a comprehensive and detailed history of the three Federations of the Empire. We have already mentioned that this is really a repetition of the previous data. Part IV is however handier for a beginner than the previous parts.

Part V is devoted to Imperial control. The chapters dealing with the question are good ones; they are reliable and instructive, bringing forth some hitherto unknown details.

Parts VI and VII (Judiciary and Church) are also excellent and interesting. In Part VIII, Chapter I, we come to the weakest portion of the work, especially in paragraph 2, dealing with "Future Prospects." It is a great pity that political views and especially prophecies should be introduced in a serious scientific study; they are always and by their nature always must be vague, uncertain speculations, only harmful to scientific investigation. It seems rather strange, for example, to hear the naïve assertion that Canada owes her independence to the vicinity of the United States and the Monroe Doctrine and that Australia will never achieve as much (p. 1459, vol. III). The methods of scientific research and of political prophecy do not go together; the author ought to choose between them and give either a scientific work or a political pamphlet.

Finally, Chapters II and III of this last Part give *in extenso* the proceedings of the Colonial and Imperial Conferences which the reader could easily find in the corresponding Blue Books.

Summing up we can say that excepting the padding, the endless references and reprints of official documents on one hand, and the theories of the author on the other, the work is a good and reliable text book and is quite up to date; it is by far the best work we have concerning the public law of the British Empire.

The political views of the author show him a staunch Imperialist; one cannot say however that he has very materially helped the cause he had at heart, as his theories are all very vague.

Mr. Ewart is perfectly right in noting the "confusing vagueness of imperialistic claims." Possibly that is their unavoidable characteristic.

Baron S. A. Korff LL.D.

Kingdom Papers. By John S. Ewart, K. C. Issued by the author. Ottawa, Canada.

Parallel to the work of Mr. Keith appear the Kingdom Papers of Mr. Ewart. We take them as a striking contrast. The two authors stand at the two opposite poles of the question of the Constitution of the British Empire. Mr. Ewart's object in issuing the Papers is quite different from that of Mr. Keith; whereas the latter tries to give an exhaustive view of the situation, treating all the details, taking up all the data, etc., Mr. Ewart is interested only in the question of principle, having in view, not scientific study, but political propaganda and as applied to Canada only.

In Paper 1 Mr. Ewart states in clear language the pros and cons of Canadian independence from the point of view of contemporary law; he shows that Canada is limited as to her constitution, which she cannot cancel or even amend without the consent of England, nor can she abolish her Parliament and she is limited likewise as to her territory, outside of which she has no jurisdiction; on the other hand she is independent fiscally, legislatively, executively, judicially, and diplomatically. One sees at once that these points are diametrically opposed to the views of Mr. Keith.

The truth lies we think, as usual, in the middle between the two extremes, though we cannot doubt that Mr. Ewart comes very near to the true situation. There still exist, however, contrary to the assertion of Mr. Ewart, a few legal and theoretical bonds, as, for example, in the "Judicial" and the "Diplomatic" independence of the Dominion; Canada can exercise her free will in both these matters, we admit, but this is only practically so; theoretically the old bonds still exist.

In Paper 2 Mr. Ewart gives a brilliant review of "Imperialism," its theories and political purpose and at the end sums up by giving the reader a clear picture of the modern Canadian national ideals versus the ideals of British Imperialism. He rightly thinks that "national depreciation is mischievous and injurious" and tries to find remedies against such a possible evil in a nationalistic upheaval. No one can deny that there exists at the present day an enormous growth of nationalistic feeling in Canada and that it is of the greatest importance for Canada's future.

Paper 4 reviews the achievements of the Colonial Conferences; the reader will not find any new facts in this pamphlet. In Paper 5 we have some very good criticism of the theories of "Some Imperialists." This paper is a very suggestive one to students of English public law.

Paper 6 is devoted to the question of a Canadian Navy. Mr. Ewart's views, though very interesting, are not convincing. He does not prove his case at all.

Paper 7 is of more importance for the student, as it gives a resumé of of the author's ideal from the point of view of constitutional law; he thinks that the relations of Canada and England nowadays can be constructed only on the basis of the theory known as "Personal Union." This certainly cannot be accepted as the bonds between the two countries (or "States") amount to much more than a "Personal Union" and will remain so probably for at least our generation. In this case we see clearly the strong negative or critical point of Mr. Ewart's writings. As to the constructive part he has not yet succeeded in giving a satisfactory solution; this we think however is by no means his fault. It lies in the nature of the case. The British Empire is passing through a severe crisis; all her old idols have to be done away with. The old forms of union between the Mother-country and her colonies are rapidly dying away (which *entre-autre* Mr. Ewart's writings helps very much to prove), but we doubt sincerely if the time has come to make a new theory to fit the new union; the union is still in building. In other words, the time has not yet come for a general theory of public law, concerned with the future structure of the Empire. Why apply to Canada the theory of Personal Union, a theory which even in Germany, the land par excellence of theoretical study, is looked upon as a transitory status, as something inevitably leading either to disruption, or to some new form of closer union? Besides, even Mr. Ewart himself does not seem to want to apply it *in extenso,* making the union of Canada and England only a dynastic question.

In Paper 8 the author gives a clear review of the three most important points of contention, the questions of merchant shipping, naturalization and copyright, stating as definitely as possible the colonial versus the imperialistic point of view. On p. 234, for example, the reader will find some very good arguments against the theories of Mr. Keith concerning the territorial limitations of the colonial legislative power which one must accept in full.

Strangely enough the author does not mention in the third paragraph, relating to copyright, the latest conference, which dealt with the matter and scored some very important points in the subject.

Paper 9 is devoted to the "revision of war relations," constructed on the principle "no obligation without representation." Here the reader can find a clear statement as to Canada's position in case of a British war. One can hardly state the matter more definitely. We will only note that Mr. Ewart is not the first one to come forward with this theory: the same views are held by no less an authority than the ex-Premier Sir W. Laurier and must be seriously considered as a very widespread colonial opinion. Australia does not lag far behind in this respect. Such a theory is far more radical than the theory of "Californian independence," mentioned by Mr. Keith and cited above. Finally Paper 10 deals with the question of Canada's participation in foreign affairs; the views of the author on this subject are hardly acceptable, but interesting. These ten papers constitute the first Volume.

In conclusion we might say that the student of public law will find in the Kingdom Papers an able statement of the colonial nationalistic point of view, coming very near to absolute independence. It is the exact counterpart of the imperialistic ideals, still put forward by some in the hope of a closer union.

These two authors give the reader opposite extremes of the question. The true solution we believe will be found in the golden mean.

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Corporations and the State. By THEODORE E. BURTON. (New York: D. Appleton and Company, 1911. Pp. xvi, 248.)

This volume contains the author's lectures at the University of Pennsylvania in 1910 on the George Lieb Harrison Foundation, together with a chapter on the recent decisions of the Supreme Court in the Standard Oil and American Tobacco Trust cases. The appendices contain extracts from Chief Justice White's opinion in the above cases, Justice Harlan's dissenting opinion, the Sherman Antitrust Act, and the Aldrich plan for Monetary Legislation.

The bulk of the work is devoted to a discussion of the origin, growth, and functions of the corporation, its importance under modern conditions and its intimate relation to the state and the public welfare. In the sixth chapter the writer passes judgment upon various plans for the control of corporations. His general attitude is well illustrated by the following language: "Thus far public regulation has given undue attention to the prevention of agreements in restraint of trade, which limit competition or production, while neglecting to provide adequate means for the punishment of palpably dishonest and illegal practices, such as the misappropriation of assets by corporate officers, the issue of fraudulent or watered stock, the declaration of unearned dividends, and the adoption of oppressive and unfair methods to destroy competition." (p. 128). While admitting that competition between natural monopolies is harmful, the writer urges that certain forms of competition between other corporations is still essential. The control of prices of manufactured goods is declared to be impracticable, the cost being governed by continually fluctuating factors. Criminal punishment for officers of offending corporations is urged, while full publicity is declared to be the most effective force in the control of corporations. This will be best secured through a voluntary, national incorporation act.

The fourth chapter is concerned wholly with banking corporations and the discussion of our monetary system. In the chapter on the Standard Oil and Tobacco Trust decisions, the writer supports the position of the court and reconciles its decision with the Trans-Missouri

Freight case, which has caused such popular confusion. This position is not made as clear as its importance deserves. In the Trans-Missouri case, the question was as to the legality of an agreement to fix rates. The "rule of reason" there urged upon the court, and properly rejected by them, was that the rates so fixed were reasonable and therefore the agreement was valid. But at the common law any agreement of fix rates, however reasonable the rate, was void, and therefore in holding the agreement to be void, the court affirmed the rule of the common law, although its language was certainly ambiguous and misleading. Exactly the same result was reached in the later cases. The "rule of reason" there adopted was to the effect that motive and intent were among the determining factors in interpreting the phrase "restraint of trade," a proposition amply justified by the established usages of the common law. In other words both cases construed "restraint of trade" in accordance with its common law usage and are in accord. The only conflict is in the dicta of the decisions and is due to the ambiguous use of the phrases "rule of reason" and "restraint of trade." The author argues very convincingly that the decisions instead of emasculating the law, have made it more workable and its meaning more definite.

On the whole the volume contains a timely discussion of the question, not ignoring its historical aspects, and embodying some of the best thought upon the subject.

Arnold B. Hall.

Problems in Railway Regulation. By Henry S. Haines. (New York: The Macmillan Company, 1911. Pp.582)

Of the writers upon railroads but few have in combination the qualifications given by administrative experience and philosophic grasp. Among the foremost of these is General Haines, who was vice-president and general manager of a prominent southern railway system; Commissioner Southern States Freight Association; President, American Railway Association, and who, during the well-earned leisure of recent years, has lectured before students on transportation in eastern universities. The present volume is the fourth from his pen to treat of railway questions of current and general interest. It contains a comprehensive survey of the conditions that attended the introduction of railways, the reckless encouragement to their construction, their rapid extension after the Civil War, the reconstruction succeeding the panic of 1873 and the developments leading to the present period of regulation which he summarizes. Then follows a description of various problems of incorporation, finance, construction, operation, traffic, discrimination, rate-making, capital and labor. He presents succinctly the difficulties that have arisen from the granting of charters by respective states to railways whose lines crossed state boundaries, deprecates enforced reduction of rates in order to diminish profits, points out the obstacles in the way of ascertaining the so-called physical valuation, insists that the deeply buried corruption of the past should not be disinterred, but that the blotting out of past evils must not be made the precedent for condonation of wrong doing in the future. He commends the Japanese practice of dividing a charter into three successive stages, preparatory, constructive and operative, emphazises the need for doing away with crossings at grades and the punishment of trespassers, predicts that the electrification of the railways will extend and that their requirements for additional capital will amount in the immediate future to about $1,400,000,000 per annum. There is an extended discussion of accidents and of logical procedure toward their prevention, and of methods for the better utilization of equipment.

Attention is called to "the most serious fact which confronts the railroad managements of this country is the continual reduction in the margin between the charge for transportations and the cost of performing the service." And it is urged that "the railroad corporations should be permitted to group themselves into traffic associations in accordance with the relations that they severally bear to certain classes of competitive traffic"; that these associations "should have the sole power to change the rates on such traffic, as circumstances warranted in the opinion of their members" but not "without a hearing from the interests to be affected by them," and that appeal should lie in the Interstate Commerce Commission.

General Haines points out the difference between the status of the railway employees in this and in the countries of Europe, where the relation is that of a sovereignty to its subjects and appeals for the aid of the brotherhoods of this country for the enforcement of discipline, it often being that some catastrophe is caused by the negligence of an employee who, "escapes the odium which is heaped upon the corporation by public opinion."

While General Haines believes in the principle of governmental regulation perhaps even to a greater extent than many of the railway officers who have accepted it, he nevertheless sees in the present status of that regulation much that is to be deplored, as is manifested by this quotation from his concluding chapter : "Federal authority has been extended from regulation of railroad rates on interstate traffic to the administration in detail of railroad operation and finance. The Federal Government now controls, in fact, the management of our national railroad system. It is a control that is irresponsible to the railroad stockholders. It is responsible only to that expression of public opinion which is agitated by transient waves of sentiment or prejudice, an agitation that is often manipulated by selfish interests, This is the policy of any government management that is not responsible for financial results. It ignores economic principles and shapes its measures with an eye to the perpetuation of its political prestige."

Municipal Origins. An Account of English Private Bill Legislation Relating to Local Government, 1740–1835; with a Chapter on Private Bill Procedure. By FREDERICK H. SPENCER. (London: Constable and Company, 1911. Pp. xi, 333).

About the only fault that can be found with Mr. Spencer's book is its title—the title that is in sight when the book is on the library shelves. To most students municipal origins suggest charters or municipal conditions of an earlier period than the granting of royal charters to cities and boroughs. But as the subtitle at once makes clear, Mr. Spencer is not concerned with the mediaeval municipalities. His study is of the formative period of modern English municipal government—the period when the old poor law of Elizabeth's reign was breaking down, and when the municipal corporations in all the larger towns were proving themselves too inept to meet the industrial and social changes to which the urbanizing of England was largely due.

An enormous amount of patient and scholarly work has gone to the preparation of Mr. Spencer's monograph, and with the most complete success; for it is a book that will appeal not only to students of English municipal development, but also to students of Parliamentary procedure, and of the political and social history of England between the American Revolution and the beginning of the reign of Queen Victoria. Its greatest value is to students of municipal history, because in no other volume is there to be found such an adequate, authoritative and interesting account of the intermediate stage in municipal development—

the stage that came between the breakdown of the old manorial system of town government in some places and the failure in other places of the old municipal corporations and the act of 1835, with which the present era in English municipal government began.

Had the old municipal corporations been efficient and trustworthy they would have required statutory powers to meet the new conditions of the last half of the nineteenth century. As it was, members of many of them were more concerned in manipulating Parliamentary elections than they were with the changing municipal conditions; and as these conditions had to be met new local authorities had to be created to deal with them. There was in this period no state department charged with the oversight of the poor law and municipal government—no state department corresponding to the local government board of today; and Parliament interested itself in poor law and municipal concerns only when a local movement resulted in the introduction of a bill creating a new local authority for poor law or municipal work. Several hundred of these new authorities were created between 1740 and 1835—many of them for parishes within what is now the area of the London county council.

Private bill legislation of this character as distinct from private bill legislations affecting only persons, began to assume noticeable proportions in the reign of Queen Anne. It increased enormously between then and the beginning of the reign of George III, and by the end of that reign it far exceeded in volume the general legislation of Parliament. Mr. Spencer traces the beginning of this legislation; how the bills were carried through Parliament; and how the standing orders were gradually trained to deal with this great mass of new business. He also analyses the constitutions of the new local authorities with a view to showing what class of men were permitted to exercise the franchise, what class was qualified to serve on the authorities, and to what extent these authorities consisted of ex-officio members.

In the earlier part of the period from 1740 to 1835 the word democracy as it is used in England today was scarcely understood; and the non-property owning classes—artisans and day laborers—showed little interest in municipal government, a fact that is easy to understand when it is recalled that England at this time had no common schools, and that in many of the boroughs the municipal councils were self-perpetuating and did not regard themselves as responsible to the townsmen at large. There was consequently little of the democratic element in most of the new local authorities; and even after the democratic movement in national politics began, about the time of the American revolution, and also after the movement for burgh reform in Scotland had made itself heard in the House of Commons, there was little progress towards democracy in municipal government. It was generally regarded by Parliament, as the concern of the property-owning class, with some concessions to non-property owners who lived in houses of a comparatively high rental or rateable value. This was a marked characteristic of the local authorities of the intermediate period—of the years from 1740 to 1835. It was, moreover, a characteristic that did not disappear with the reform of the municipal corporations in 1835; for several examples of this lagging behind of democracy in local governments as compared with national government, can be cited which survived until as recently as 1900.

Mr. Spencer has bestowed exceptionally good work on the development of Parliamentary procedure that had to come with the enormous increase in private bill legislation. It is here that Parliamentary history is indebted to him for admirably supplementing both Clifford's History of Private Bill Legislation and Redlich's much later work on Procedure in the House of Commons. Students of the social history of England from the reign of George II to that of Queen-Victoria will also find Mr. Spencer's work of value, and especially helpful to a realization of some of the changes that came over English life in the last half of the eighteenth century due to the urbanization of England.

E. P.

La Fortune publique de la France. By Edmond Théry. (Paris: Librairie Ch. Delagrove. 1911. Pp. 256).

This little book represents an attempt to prepare an inventory of the public fortune of France, which the author defines as "the sum of the private fortunes of the inhabitants of France." His method consists, for the most part, in the presentation of comparative tables for the years 1892 to 1908 of all the various resources of the country such as lands, buildings, crops productions, output of mines, manufactures, farm animals, railroads, canals, the merchant marine, banks, etc. The years 1892 to 1908 were chosen for comparison for the reason that the former coincides with the establishment of the new tariff regime; while the latter was the year in which the government made an elaborate inquiry into the value of landed property and agricultural conditions. By way of recapitulation M. Théry places the total resources of France at 287,282,000,000 francs in 1908. This is in increase of 44,333,000,000 francs over the estimate for 1892 and represents a per capita wealth of about 7,300 francs per inhabitant. The above estimates do not include the value of the forests; or edifices belonging to the state, the departments, or the communes. Many of the statistical tables, notably those relating to private savings, education, exports, manufactures, (particularly automobiles) and the decreased consumption of alcohol, show progress along economic and social lines, but others, notably those relating to population, crop productions, particularly of cereals, the value of farm animals, and the value of landed property, can hardly be said to be encouraging.

La Démocratie Politique et Sociale en France. By ALFRED FOUILLEE. (Paris: Felix Alcan. 1910. Pp. 223).

In this book M. Fouillee discusses in turn the errors of individualistic democracy, the idea of country, instruction in a democracy, and social progress in France. For us the chief interest is in the first and last of these essays. It is an error to suppose, he says, that the establishment of the republican regime in France was in itself a solution of the political question. From the point of view of the sociologist the democracy is still very far from having realized its ideal. Many sociological errors have been committed, but it is wrong that they should be charged to the parliamentary regime, as is often done. The trouble is that France does not possess parliamentary regime in its true form, since the will of the majority is too often nullified by the minority. The true remedy is a system of proportional representation, which, by the way, France seems now on the point of introducing. The vices of the present democracy are: (1) that it is not organized on the true principle, that is, according to the idea of the *organisme contractuel,* and, (2) it is satisfied with being purely *political* instead of *social.* To simple political or civil justice must be added more social justice. Among the particular errors of the present democracy are the lack of permanence and stability in its institutions, too much political demagogy, the too general existence of electoral frauds, government interference in elections, financial extravagance, the unrepresentative character of the parliament, due largely to the *scruten d'arrondissment* method of election and the lack of a system of proportional representation, the too general abstention of the voters in elections, too much bureaucracy, too many representatives (the number should be largely reduced in the interest of more efficient parliamentary procedure) the system of voting by proxy in the chambers, legislative sterility, and the abuse of the right of interpellation. The existence of a second chamber is, he says, from the view point of philosophy and sociology, absolutely indispensable, but the senate should represent more accurately the "perpetual and collective interests of science, the arts, philosophy, morals, justice, the national defense, the national industry, the national finances, and agriculture" as the chamber of deputies represents "more particularly the wills of all individuals actually living." The existing method of electing the senate he finds objectionable, and suggests that its character could be substantially improved by choosing the senators from certain classes or bodies like the magistrature, the educational staff, the army, and certain commercial and industrial organizations. The executive, he complains, has been reduced to a position of feebleness by the encroachments of the legislature and the judiciary, and, as a consequence, is often powerless when dealing with individual violators of the law. The individualistic doctrine that the President should have the power neither to speak nor to act but merely to play a ceremonial role, he says, is false and pernicious. The result is that the chamber of deputies has become the dominant organ of the government, though a very unrepresentative body. By reason of its preponderance in the national assembly it, of course, determines the choice of the President of the Republic. France, is therefore, governed really by an oligarchy. The mode of electing the president should be changed. But neither direct election by the people nor by the councils-general, both of which methods have been suggested, is the true remedy. An intermediate method, such as election by a body composed of the members of parliament and certain other great bodies would be preferable to either. Finally, a much-needed reform is the protection of the ministers against the pressure of the senators and deputies in the matter of appointments—a practice which has become a serious evil in the administration of the government.

In his review of the social progress of France, M. Fouillée calls attention to the principal landmarks in the legislature of the third Republic in the interests of the working classes, the rise and progress of labor organizations and the general amelioration of the condition of all classes of the population. For more than thirty years, he says, the legislature has not ceased to make reforms in the interest of laborers, women, children, the old and infirm, and the dependant classes generally. Altogether, it is a record which does honor to the Republic.

J. W. GARNER.

Souvenirs, 1848–1878. By C. DE FREYCINET. (Paris: Librairi Ch. Delagrove. 1912. Pp. 403).

These are the recollections of a Frenchman who has been more or less prominent in the public life of his country for the greater part of sixty years. A Senator of the Republic since its establishment, and a member of nine different ministries, four of which he was the chief, he possesses rare qualifications for narrating the political and parliamentary history of the Third Republic. Beginning his narrative with an account of the revolution of 1848, the principal events of which he witnessed while a student at the Polytechnic School at Paris and in some of which he participated in an official character, he describes in turn the reaction and the coup d'etat of 1851, the war with Germany, the work of the National Assembly (1871–1875), notably the establishment of the Republic and the framing of the constitutional laws of 1875, the presidencies of Thiers and MacMahon and the crises growing out of the system of MacMahon to govern through a ministry that lacked the confidence of the Chamber of Deputies. His portraitures of some of the leaders of the time are particularly interesting. "It has been given to me, in my political career," he says, "to approach intimately four superior men, founders of the Republic, Thiers, Dufaure, Jules Grèvy and Leon Gambetta. It is difficult to compare their talents, so dissimilar. But I believe that I can say that of the four Gambetta was the best endowed. Certainly I have admired, like all my contemporaries, the universal competence of Thiers, the sober eloquence and solidity of Dufaure, the sharp and ponderous mind of Grèvy. But no one has given me the sentiment of power in the same degree as Gambetta." Concerning MacMahon, whose obstinacy Freycinet severely criticises, he says, that although figuring as the champion of reaction he possessed a fund of humor very liberal, but that he exaggerated the point of honor and did not appreciate the new conditions in which the Constitution placed him. In private conversation he was full of humor and easily accommodated himself to his surroundings, but if his presidential duties presented themselves he at once became grave, restless, brusque and imperious.

To the duc de Broglie he thinks history has been unjust. Though vulgar ambitions have often been attributed to him, it was without reason. "No one more than himself," he remarks, "has deplored the fatal direction of his ideas, but he was sincere and he desired to promote the welfare of the country. He feared the Republic and had a horror of the mob (*foule*). He had faith in the excellence of the governing classes and believed that the country could only be saved by a Constitutional Monarchy, which he desired to see re-established."

One concludes the reading of M. Freycinet's Memoirs with a feeling of regret that they end before the time at which he became the Chief of the Cabinet. President of the Council of Ministers in 1880, again in 1882, again in 1886, and for the fourth time in 1890, he was the leading political figure during some of the most eventful years of the Republic. It is to be hoped that he may live to bring his narrative down at least through the period covered by his own ministries. He leads us to hope that this will be done, for he says in conclusion: "later, if time is left to me, I will continue my recital."

Les Fonctionnaries: leur action Corporative. By GEORGES-COHEN, Maitre des Requêtes au Conseil d'Etat. (Paris: Armand Colin, 1911. Pp. 394).

This book is one of the best of the numerous recent contributions to the literature dealing with the problem of the functionaries in France. For some years this problem has steadily become more acute until it has reached what many Frenchmen regard as a crisis. The Functionaries,—the number of which has increased until there are now nearly a million,—have long complained of their lot: poor pay (many of them receive only three or four hundred dollars a year), favoritism and politics in the matter of appointment and advancement, and lack of freedom in matters of opinion and association. Some years ago they began to organize for the purpose of bringing pressure against the government to improve their lot, especially in regard to the method of appointment, advancement, and pay. At first they organized themselves into simple *associations professionnels* somewhat similar to associations of teachers in America. Generally, though not always, the government made no objection to such organizations. Then they went a step further and began to organize *syndicats*, or associations similar to labor unions among workingmen in private industries and demanded the right to affiliate themselves with the *conféderation général du troevail.* Finally a goodly number demanded the right to strike as a means of forcing the government to comply with their demands of better conditions of employment. This movement reached a crisis in 1909 when the postal employees throughout France made a general strike. The government, while generally considering the right of the functionaries to organize themselves into professional associations, hesitated to allow them to form *syndicats* and absolutely denied the right to strike. The strike of the postal employees was suppressed with a strong hand by the Briand government and hundreds of the strikers were dismissed from the public service. The history of the organized movement among the functionaries in the various branches of the public service, their demands for better treatment and the present status of the question are freely treated by Monsieur Cohen. Their demand for the enactment of a law guaranteeing them against political favoritism and the arbitrary action of the ministers in the matter of appointment and advancement is generally recognized as a perfectly just and reasonable one and each of the governments that have succeeded since 1909 has promised such a statute. The matter has been made the subject of several parliamentary investigations and reports and various *projets* have been presented and discussed. The present ministry has made the reform an important part of its program and is now wrestling with the problem. Monsieur Cohen points out that while no general statute has as yet been passed, most of the ministers have, as a matter of fact, instituted, by means of ordinances, substantive reforms in their departments so that in reality many of the grievances of the functionaries have already been redressed. He shows also how the Council of State, by a liberal jurisprudence, has come to the relief of the functionaries, notably by its new policy of annulling every act of appointment or promotion made contrary to the ordinances promulgated by the ministers on the subject of appointment and promotion. According to this jurisprudence it is perfectly competent for the government to abrogate or modify an ordinance prescribing a particular method of appointment or advancement, but until this is done the strict observance of the ordinance is obligatory. Monsieur Cohen strongly condemns the right of the functionary to strike, though he sympathizes with most of their other demands, as does the general public. Practically everybody in France admits that the number of functionaries has been multiplied out of all proportion to the actual needs of the public service and that the most urgent reform is to reduce the number and increase the salaries of those who remain. With the present high cost of living in France the situation of the army of petty functionaries, especially is well nigh pitiable.

J. W. GARNER.

Valuation of Public Service Corporations. By ROBERT H. WHITTEN, Ph.D. (New York: The Banks Law Publishing Co. 1912. Pp. XL. 798).

This is a very valuable work—valuable to the political scientist, the economist, the engineer, the accountant and the lawyer alike,—presenting as it does, a careful and comprehensive view of the economic and legal considerations involved in the valuation of public service corporations, whether for the purpose of taxation, of accounting and capitalization, of public purchase or of rate making. It is generally recognized that the criteria of the justness and reasonableness of the valuation for each of these purposes are not the same, and, even where the purpose is the same, the varying circumstances of different cases often require the application of special standards. The subject is thus one, which, for adequate treatment, requires the detailed exposition which Dr. Whitten has given us. For his material Dr. Whitten has resorted to court decisions, unpublished reports of special masters in equity, reports of arbitrators and appraisal commissioners, and decisions of railroad and public service commissions. Recognizing as he does that much of this material is not easily available, even in the larger law libraries, the excellent plan has been followed of giving numerous and full quotations from the authorities. An extended bibliography of Valuation & Depreciation is given in the last chapter, and an exceptionally full index is provided. Space will not permit an attempt to examine or criticize the varous conclusions reached by the author, but the reviewer will state that he personally has found them uniformly sane and well supported by both economic and legal reasoning. The classification of topics is excellent, and the language clear The fact that Dr. Whitten has for several years been connected in an official capacity with the New York Public Service Commission for the First District will undoubtedly give an additional authority to his treatise.

The Constitutional History of England Since the Accession of George the Third. By SIR THOMAS ERSKINE MAY. Edited and continued to 1911 by FRANCIS HOLLAND. (New York & London: Longmans, Green & Co. 1912. 3 vols. Pp. 468, 441, 398).

Very welcome is the appearance of a new edition of this standard work, supplemented as it is by a third volume continuing the narrative to the year 1911. The work of May himself is so well known that no critical estimate of it is here required. First published in 1861—3, in two volumes, a third edition in three volumes was issued in 1871, which has since been repeatedly reprinted, but never before continued beyond 1860, except by a single chapter furnished to the third edition and covering the period between 1860 and 1870, In the volume which Mr. Holland has prepared, May's topical method of treatment—certainly the best method—has been continued, though, necessarily, some of the topics are different, or, where the same, receive relatively less extended treatment. Thus, in particular, the Crown receives very much briefer consideration than May had given it for the obvious reason that during the period which Holland covers the powers of this branch of the English Government have not substantially changed. The subjects to which Mr. Holland devotes separate chapters are Parliamentary Reform, Party, The Home Rule Movement, Religion and the State, Local Government After 1870, Reforms in the Civil Service, The Army, the Judicature, The Self-Governing Colonies After 1860, and The Parliament Bill of 1911. The forty pages which are given to this last subject furnish an exceptionally clear account of this important constitutional measure and of the circumstances leading up to its enactment.

In the main Mr. Holland writes in an almost disappointingly objective manner. He does at times, however, pass estimate upon the events of policies which he describes. Thus he deems absolutely impracticable an Imperial Parliament in which the colonies might be represented in proportion to their contributions to the Imperial revenue. So also he doubts the value of an Advisory Council similar to the Indian Council, armed with no binding authority. However, he welcomes the tendency of the Conferences to develop into an instrument of common Imperial action. The Parliament Act of 1911, which is recognized to be but the first step to a complete reform of the constitution of the House of Lords, would, he thinks, have been avoided had the Unionists made proper use of their tenure of office, or taken warning by the reverse of 1906, and have not, by their tactics, forced the moderate Liberals into an alliance with the extremists. The future is to Mr. Holland not free from constitutional dangers:—"the constitution is now at the disposal of a vast and mobile electorate, to whom tradition and history mean very little. To this electorate, as to all the successive depositories of power, the flatteries of ambitious men are addressed. A modern theory, resting on no historic basis, seeks to show that the main function of the House of Lords has always been to give effect to the permanent and considered will of the people, whereas in fact it is as a check to democracy that a second chamber is really useful, and was always justified as such in former times not only by Tories but by Whigs."

The International Law and Custom of Ancient Greece and Rome. By Coleman Phillipson, M. A., LL. D. (New York: Macmillan & Co., 1911. Vol. I, pp. xxii, 419. Vol. II, pp. xvi, 421.)

No more striking illustration of the fact that the present generation is rewriting the history of the past, especially of the remote past, could be found than in this latest contribution to the history of international law. When Kent, in his Commentary on International Law, states that even the most civilized states among the ancients seem to have had had no conception of the moral obligations of humanity and justice between nations, and when Wheaton, in his History of the Law of Nations, published in 1845, tells us that the Greeks considered they had no obligations towards other states apart from those regulated by an express compact, and that states not parties to the compact were in the position of outlaws,—we can only conclude that the vast array of facts presented by Mr. Phillipson were entirely unknown to them.

The distinctive feature of international law among the Greeks is that it was based upon the peculiar city-state system of the Hellenic world. The city-state was an organized community, dwelling usually within a walled town, and enjoying independence and autonomy. The citizen of these city-states owed a double allegiance, an allegiance first to his city, and then to the wider Hellenic circle. The latter allegiance, which was founded upon a common race and a common religion, undoubtedly tended to promote friendly relations between the various cities, but as these cities constituted independent states possessing actual autonomy, the fact that the law regulating their mutual relationship might be called *intermunicipal* does not prevent if from being truly *international* in character.

The Greek conception of law was based upon religion; the ancient sanction of positive law was rather its divine origin than the acceptance of it by the people; but it is of no consequence where the sanction lies, provided it be an effective one, and duties assume a juridical character as soon as the obligations correlative to them are acknowledged. It is true that a large part of what the author claims to be international law had its basis in those general conceptions of law, which were variously termed the universal law, the law of nature, the moral law as opposed to the positive law, natural justice as opposed to conventional, etc. But so long as the rules derived from the Greek conception of law were regularly insisted upon and applied between independent and sovereign nations, they assume the character of law, notwithstanding the fact that the principles of juridical equality and reciprocity of nations were not as definitely recognized then as now.

In Rome, as in Greece, religion formed the basis of law, notably during the first half of her history. The *good faith* of which Rome was so proud was closely allied to religion, piety, respect for the gods. But the juristic genius of Rome soon led her into wider fields of law than were known to the city-state system of the Greeks. The *ius gentium*, "originally an intertribal law of limited application," gradually expanded through the growth of dealings with other nations than those of Italy, and later became a public and private international law controlling the then known world. It supplemented the civil law of Rome, and though its character of private international law was more emphasized in the beginning, it later became the *ius belli et pacis* and regulated the relations of Rome with other states. It is true that in the second period of Rome's history, when she had become mistress of the surrounding nation, the principles of reciprocity and juridical equality were less recognized than formerly, and international law as such declined; but if we turn to the history of our own times we must recognize that although in theory the states of the civilized world are legally equal, in actual fact they are far from being so, and instances of strong powers playing the part of international bullies are but too frequent. If. in theory Rome claimed supremacy, in practice she acknowledged obligations which show her acceptance of a higher law than that of policy.

Perhaps the most instructive chapters of Mr. Phillipson's volumes are those dealing with the rights and duties of domiciled aliens. The change in the position of metoecs, and the gradual increase of privileges accorded to them, mark the slow breaking down of the spirit of exclusiveness which controlled the policy of the cities of Greece during the early and classical periods. Commerce was then, as in more modern times, the opening wedge, and civic pride gave way before it, when once the city's needs had outgrown the resources of the surrounding territory subject to it. In Rome, on the other hand, the desire for supreme dominion and the spirit of world sovereignty did what commerce had done for the Greeks, only did it more completely and effectively, and brought about the amalgamation first of the various tribes of Italy into a single Roman state, then of the distant colonies andconquered nations into the unity of the Roman empire. The increasing facility with which naturalization was granted marked, in Greece,the gradual loss of state personality among the independent cities, and in Rome the gradual growth of the policy of imperial expansion.

The chapters on international arbitration in Greece and Rome are especially valuable for the many examples of arbitral awards cited by the author. Instances of arbitration in Greece are to be found even in the traditions of the heroic age, and by the time of the classical period the conception of arbitration was clearly developed, and arbitral procedure was a recognized method for the peaceful settlement of international and intermunicipal disputes. In Rome, on the contrary, in the earlier period of her history, the desire of supremacy made the acceptance of arbitration impossible; and later on, when her domination was assured, it was rather the quarrels of subject peoples that were submitted to her tribunals, than her own disputes with independent nations. There could be no real arbitration where states were forced to submit to a tribunal not of their own choosing.

In treating of the law of war Mr. Phillipson does not attempt to cover over the injustice which often accompanied a declaration of war, and the horrors attending actual combat. If the college of fetials went through the formalities of petition for redress of grievances, of solemn threat, and ceremonious declaration of war, it did not always follow that the cause was a just one even in the eyes of Rome, but granting that there was occasional hypocrisy, it is at the same time unquestionable that the *ius fetiale* exercised great influence in reducing the excesses of warfare and the recklessness and unscrupulousness with which the nations of antiquity went to war.

It is difficult not to continue comment upon the various subjects so lucidly and convincingly treated. There are further chapters of dealings with the consular system, the right of asylum, extradition, negotiation and treaties, confederations and alliances, and the balance of power.

It is seldom that a work exhibiting so much scholarship, so much painstaking investigation, thoughtful comment, and careful reasoning, is offered to the literary world. The author has had recourse to Greek and Roman sources which have remained hitherto untouched as regards their present application, so that his work is at the same time the most authoritative treatise upon the subject, and the first comprehensive and systematic presentation of the matter which has yet appeared. Perhaps the author might have economized space by omitting certain citations from French and German writers, where an almost literal translation of the passages immediately precedes. Citations from ancient writers whose works are accessible to all may also seem out of place, except for the service they render in emphasizing the text and in facilitating a comparison of the modern with the ancient technical terms.

But these are minor points, and they in no way detract from the praise which the author deserves for the difficult task he has brought to so happy a completion. The introductory note by Sir John Macdonell points out the greater interest which the work will have because of the fact that the international law of the ancient world is in some respects "much more akin to that of today" than is the law described by Grotius in the De Jure Belli et Pacis.

Charles G. Fenwick.

A General Survey of Events, Sources, Persons, and Movements in Continental Legal History. By various authors. *Volume I of the Continental Legal History Series.* Published under the auspices of the Association of American Law Schools. (Boston: Little, Brown & Co., 1912. Pp. 754.)

The undertaking which this volume introduces constitutes an epoch-making event in our legal literature. The book under review is the first of a series of eleven volumes translated from the best continental legal literature, whose purpose is to present to the American and English lawyer and historian the history of European law. This volume deals with the external history of continental law—that is, the sources, the constituent elements, the events, persons, and movements which have influenced its development—from the fall of the Western Roman Empire in 476 to modern times. With this preliminary acquaintance with the formal history and structural chart of the law, the reader will then be better prepared to understand and appreciate the history of the institutions of the law, private and public, which will be developed in the subsequent volumes of the series.

The Committee of the Association of American Law Schools, to whose initiative the present volume is to be credited, have succeeded in producing a book unique in modern legal literature. They have made careful selections among the works of the leading specialists of Europe, and have welded their contributions to the legal history of their respective countries into a story whose continuity of development must have been as difficult to achieve as it is successful in accomplishment. Were it not for the footnote reference to the sources of the translation, we could hardly believe that some of the sections are as stated, merely mosaics from the works of several authors.

After a brief prologue by Maitland tracing the legal conditions in Southern Europe up to the time of Justinian and the Germanic invasions, the story begins. It is divided into nine parts. Part one covers the period from Justinian to Feudalism, or until about the eleventh century. This is the period of the Teutonic invasions and of the complex relationship between Roman and Germanic law previous to the first shaping of indefinite national boundaries. A study of the various Germanic codes, of the formation of the Frankish Empire and its legislation, of the disintegration and localism of law after Charlemagne and of feudal law brings us to the period when national lines may be vaguely traced.

From about 1000 A. D. in each country respectively, the history of law in Italy, France, Germany, Netherlands, Switzerland, Scandinavia and Spain is then taken up in separate parts. A final part treats of canon law, its structural elements up to the *Corpus Juris Canonici* and beyond, and its influence on secular law, which had already been traced in a general way in dealing with the legal history of the individual countries. The history of each country is divided into three or four periods, the first ending at about the thirteenth century and the second at about the eighteenth or nineteenth. The last period extends generally from the early 1800s, when codification began its sweep through Europe, until modern times. Within each period the structural evolution of the law is traced, and in spite of the detailed treatment of national phenomena, the broad common highway of the development of the law is the strongest impression retained after having read the book. We find treated as units and yet as constituent threads of a gradually unfolding story the respective spheres of influence and mutual inter-relation of Roman law and of the vast number of local statutes and customs, the influence of the canon law and of imperial and local legislation, the influence of the revived legal science of the 1300s, as nurtured in the Italian law schools and spread thence throughout Europe, the influence of the Renaissance and the humanists, the subsequent fate of the Roman law in its struggle with native law—predominating in some countries, as in Italy and Germany, subsidiary only in others, as in portions of France and northwestern Europe, not received at all in others, as in Scandinavia and Switzerland—the legislation after the 1500s, the different schools of legal thought and, finally, the introduction of codification and the evolution of modern law. Throughout the work emphasis is laid upon the sources of the law, the books in which it is recorded, the persons whose names may be identified with contributions to its development, and, rounding out the whole, the various racial, religious, political, social and economic factors which have entered into the making of a nation's law.

The names of Calisse, Brissaud, Brunner, Stinzing, Schroeder, Siegel, Stobbe, Zoepfl, Van Hamel, Huber, Hertzberg, and Altamira, from whose works the translations have been made, are a guarantee of the intrinsic merits of the book. An editorial preface by Professor Wigmore and two brief, yet brilliant, introductions by Mr. Justice Holmes and Professor Jenks whet the intellectual appetite of the reader. Five maps showing the territorial application of law during the period discussed add to the value of the book. The translations are the work of several men, and not the least commendable feature is the smoothness and literary style preserved throughout. The linguistic and legal attainments necessary to make such a translation must be rated very high, and the translators of this book are to be congratulated.

To those who have at heart a better tone and higher standards in our legal education, the present volume, appearing as it does after the Essays in Anglo-American Legal History and concurrently with the Legal Philosophy Series, comes as a happy omen of a new era in our legal learning. Because of general linguistic limitations and the lack of stimulus to research along lines of legal scholarship, the history of the law, especially its development in Europe before spreading out from the main stream into separate national channels and its subsequent course in these channels, has been literally a closed book to the American student and lawyer. The present volume opens up this hitherto—to the American student—unexplored field. In its evidence of the recurrence of legal cycles, as Wigmore indicates, and of the truth that history repeats itself, American lawyers, with the present condition of American law in mind, will find food for thought. The present condition of the law will reveal itself as but a link between the past and the future and in improving that condition, we have the benefit of the experience of similar conditions and their evolution in the past. The reviewer confesses to having read the book with an unusual enthusiasm, for which, however, the book has been a justifiable source of inspiration. The enterprise thus initiated was as masterful in conception as it is in execution. The members of the Committee, Messrs. Freund, Huberich, Lorenzen, and Mikell, and especially their able Chairman and the father of this undertaking, Dean Wigmore, have not only placed the American bar under a profound debt of gratitude, but, in the judgment of the reviewer, have erected to themselves a permanent monument. In publishing this volume and those to follow, a great work is being performed, whose importance in our legal education will be estimated at its true value and fully appreciated only in the perspective of time.

EDWIN M. BORCHARD.

Story of the California Legislature of 1909. By FRANKLIN HICHBORN. (San Francisco: James H. Barry Co. 1909. Pp. 296.)

Story of the California Legislature of 1911. By FRANKLIN HICHBORN. (San Francisco: James H. Barry Co. 1911. Pp. 348.)

Little did the members of the California legislature of 1909 dream that there journeyed with them to Sacramento a quiet individual "takin' notes," the publication of which would turn flashlight upon "ways that are dark and tricks that are vain" in California politics. The minions of the railroad "push," hitherto dominant in political affairs in the state, had been in the habit of meeting at the state capital to give the wishes of their political masters the form of law. California was owned body and soul by the Southern Pacific. The people of the state were not lacking in civic intelligence nor were they apathetic as to their civic duties, but they were not organized to offer resistance to the forces of the railroad "machine." There was no question that the majority of the California electorate stood for the things that are high and of good repute, and the legislature of 1909 fairly represented them, but when the strength of the element which stood for clean politics was called upon in any emergency, it was defeated repeatedly by the superior organization of the few to whom politics was a synonym for plunder. The anti-machine element meant well, but it did not know how to "play the game." Mr. Hichborn was a firm believer in the inherent soundness of the people, and he was persuaded that if they could be enlightened as to the way politics was being played in California, without any regard for the rules of the game, a tremendous upheaval would follow. If a legislature desirous of good government failed to secure it, the reason must be sought in the fact that the opponents of the corrupt "machine" were unskilled in the use of the weapons which had been placed in their hands. The reform element had no plan of action, no organization, and foolishly allowed the "machine" to organize both sides. In his first volume, Mr. Hichborn turns the light of publicity upon the crooked methods of the political "machine" by which the will of the people was defeated, and exposes to plain view the tricks by which the desires of the voters were nullified. He kept mercilessly, and fearlessly, on the trail of the legislators, and put what he found into cold type. The result of this publication, as evidenced by the second volume, has proved conclusively that when the people of California awakened to the actual situation, and understood the way in which they had been hoodwinked by the machine, the reign of the "Railroad Push" was ended. California was free. Representative government represented the people. Each legislator was called before the bar of public opinion and forced to face his record. There was no escape. The power of publicity was amply demonstrated by the vote of the succeeding election.

Mr. Hichborn has done a tremendous public service to California in the publication of these volumes, and has pointed the way of escape to other states suffering from similar conditions.

B. E. H.

The American People: A study in National Psychology. Volume II, The Harvesting of a Nation. By A. Maurice Low. (Boston: Houghton Mifflin Co. 1911. Pp. vi, 608.)

Regarded as a study of national character, Mr. Low's book is a brilliant piece of work; looked at as history, it is illogical and insufficient; but in fairness it should be appraised from the former point of view. The author has read widely, and on the whole wisely, but often shows a singular disregard of important aspects of our national development. He criticizes severely the traditional American treatment of the Revolution, but has himself failed to grasp the fundamental economic and commercial causes leading to it. The three stages of our national development have, according to Mr. Low, been ushered in by three wars—the Revolution, the Rebellion, and the Spanish war. But while the Revolution marked an important change in American political life, it did not alter the current of commerce or culture, which remained colonial as before. Among the author's more valuable discussions are the chapters on "A Country without a Capital," though here he rather reverses cause and effect; on "Immigration," though his claim to have discovered "the law of immigration" will scarcely be conceded; and on "The Psychological Effect of the Spanish War," which while true is not altogether new. Optimistic, suggestive, and interesting, it is a very readable book.

E. L. Bogart.

A Short History of Women's Rights. By Eugene A. Hecker. (New York: G. P. Putnam's Sons. 1911. Pp. 292.)

This is one of the dozen or more books on woman which has recently appeared. The author, evidently a zealous advocate of complete woman's political suffrage as a vital and national issue, has undertaken to supplement the work published by Laboulaye in 1843. His compact survey of the changing status of woman extends from the days of Augustus to the present. Although his chief aim is to depict the strictly legal aspect of the subject, he has introduced concrete illustrations of the conflicts of human passion and public opinion which combined to set in motion the legal processes. Special attention is given to the progress of women's rights in England and the United States. In treating the condition of women under Roman law, under the early church, among the Germanic peoples, and under canon law he gives many citations indicating that he has investigated primary sources.

The chapter on women's rights in England is largely based on the commentaries of jurists such as Pollock and Maitland. The chapter on the progress of women's rights in the United States is partly inspired by a history of woman suffrage edited by Elizabeth Cady Stanton, Susan B. Anthony and others. Here he presents a general review of the various movements connected with the subject, and also series of tables showing at a glance status of women today in the various states. He dates the beginning of the agitation for women's rights to the visit of the Scotch woman, Frances Wright, to the United States in 1820. Its later growth he attributes to its first great impetus in the period of anti-slavery agitation, beginning in 1832, and the later stimulus from the World's Anti-Slavery Convention at London in 1840 resulting in the Women's Rights Convention of 1848 at Seneca Falls (New York), which the gallant newspapers declared was organized by divorced wives, childless women and sour old maids. The convention of 1848 bore its first fruits in the property bill enacted in New York state in 1848, and amended in 1860—the pioneer in the movement for state legislation which spread with amazing rapidity until the civil war. Mr. Hecker concludes his chapter on the United States with a series of fifty interesting tables of data by which the status of women in all the states is seen at a glance but which could have been made more convenient by combination in a single tabular chart. The data is arranged under six heads: (1) age of consent, (2) population, (3) husband and wife, (4) divorce, (5) labor laws, and (6) political conditions and industrial and professional status.

In his general conclusions the writer considers the five most serious objections to the granting of equal suffrage: theological, physiological, social or political, intellectual and moral. The first he regards as practically obsolete among Protestants. The second (physical weakness), although more powerful, is equally applicable to aged or invalid males, and is weakening with the substitution of strategy and intelligence for brute force in ruling the world. The third he attempts to prove untenable either from the orthodox view that marriage ought to be the goal of every woman's ambition, or from the heterodox view that she has a right to remain single in order to devote herself to the realization of some ideal. Referring to the recent admirable intellectual work of women, he wonders at the imbecility of those who assert the doctrine of intellectual inferiority of women or accept the doctrine that the political acumen of man, however degraded is superior to that of woman. To the moral objection that woman is too impulsive to hold responsible positions and must constantly have men to protect her he replies by referring to the derelict manner in which man has heretofore performed this pious duty even in the days of lauded chivalry.

As indispensable reforms, Mr. Hecker urges that the double standard of morality for the sexes must gradually be abolished, the age of legal consent made uniformly twenty-one, the evil of prostitution taught to the public and women trained as fellow citizens and given the full right and equal opportunity to enter any profession or business which they may desire.

James Morton Callahan.

Die Englische Gerichtsverfassung: Eine systematische Darstellung. Von Dr. Heinrich B. Gerland. (Leipzig: G. J. Göschen'-sche Verlagshandlung. 1910. Two volumes. Pp. 1020).

The impetus which German scholarship in the field of English political institutions received a generation ago from the works of Gneist has been fruitful of a number of very eminent contributions. Within the past decade the appearanec of several really important treatises dealing with various phases of English government have put both English and American political students to shame. As against the one great American work on *The Government of England* by President Lowell of Harvard, and with no work in the same category by England's own scholars, may be mentioned Redlich's two works on *The Local Government of England* and *The Procedure of the House of Commons*; Hatschek's *Englisches Staatsrecht;* and finally the work under review. It is certainly a matter of sincere congratulation that the English judicial system has now received the same exhaustive and critical investigation to which English local government and parliamentary procedure have been subjected.

The work is written primarily to supply German students and reformers with the *facts* concerning the English judiciary. Hitherto understood very imperfectly, and often seriously misinterpreted, it has been made to support all sorts of arguments with regard to proposed reforms in the German judicial system, and the bitter controversies which have arisen attest the necessity of an impartial, exhaustive and unpolemical study. The author, who is a professor in the University of Jena, in spite of the manifest difficulties of the task, has succeeded in reducing to orderly and lucid analysis the heterogenous and complicated system of English judicial institutions. The method employed is historical. The author is certainly correct in insisting that such a confused and illogical group of institutions as the English courts can only be adequately treated by tracing the growth and development of each individual institution. There are no broad general principles upon which the English judicial system rests. Each part is the product of its own special historical circumstances. A strictly inductive method must be followed.

Beginning with a study of the lower courts: justice of the peace; petty sessions; quarter sessions; county; and coroners', some very interesting tendencies are disclosed. The old county squire, so common a character in English fiction and the subject of Gneist's enthusiastic praise, has nearly disappeared. Justices of the peace, though often possessed of larger technical knowledge of the law than their predecessors, are generally nowadays men of far less influence and authority in their communities. The growth of large cities also compelled the establishment of specialized municipal courts which, of course, bear little resemblance to the old justices' courts which they have replaced. Everywhere, the author insists, the processes of specialization and of localization are evident in the administration of justice. The county courts are increasing in importance and becoming localized and specialized tribunals for the adjudication of civil cases. The assizes are suffering a corresponding decline. For criminal cases, in place of quarter sessions and assizes, permanent local criminal courts are coming into existence and bid fair to entirely supplant the older and more clumsy, as also less technically fit, tribunals. The ancient practice of riding on circuit, to which the uniformity of English law has been so largely attributed, is destined to disappear. Its usefulness in centralizing and unifying justice in the past is beyond question, but it is today out of accord with the demand for localized and specialized courts. Another aspect of the movement toward localization is the decline in the commanding position of the barristers and the corresponding enhancement of the position of the solicitors. The former are attached to the High Court in London, and, with few exceptions, actually reside in the metropolis. They are the embodiment of the principle of centralization of justice. The solicitors, on the other hand, are scattered all over the kingdom. The author believes that the division of the legal profession must soon disappear entirely. Along with the tendency toward localization and specialization is to be noticed that toward a more definitely hierarchical organization of the courts. This means the eventual elimination of the confusion and heterogeneity that now exists and the introduction of system and order in the organization and arrangement of the courts.

A very lucid and complete description is given of the High Court and its several subdivisions; the Court of Appeal; and the House of Lords in its capacity as a court. Special and local courts such as the Railway and Canal Commission, the Courts of Survey, the ecclesiastical and military courts, the local chancery courts in Lancaster and Durham, the university courts at Oxford and Cambridge, the Court of Passage in Liverpool, all receive full and interesting treatment. Judicial procedure is likewise given considerable attention. The only serious omission is the failure to describe the Judicial Committee of the Privy Council, the importance of which is, to be sure, not so great for purely English as for colonial and imperial interests. Yet we can scarcely conceive how a work of such a comprehensive and exhaustive character should vouchsafe only a passing paragraph to a tribunal of so great importance both past and present. The author's excuse is that the Judicial Committee is not an integral part of the judicial system of England. It has few specifically English functions and these are not important. It is technically not a law court but an arm of the executive administration. Nevertheless we feel that, even though it be at the expense of preserving the logical unity of the work, an adequate discussion of the Judicial Committee ought to have been included.

It is to be sincerely hoped that an early translation of this work into English will make it more generally accessible. It is surely a curious and significant fact that the student of the English judiciary, who has hitherto been compelled to go to de Franqueville's *Système judiciaire de la Grande Bretagne* (1893), an untranslated French work, for the best treatise on the subject, must now resort to Gerland in default of any satisfactory discussion in English.

WALTER JAMES SHEPARD.

Our Judicial Oligarchy. By GILBERT E. ROE. With introduction by Robert M. La Follette. (New York: B. W. Huebsch. 1912. Pp. vii, 239.)

In this little book Mr. Roe offers us a sympathetic review of the reasons "why the people distrust the courts." One reason, in his language, is the following: "The courts having seized the power to declare some statutes invalid because unconstitutional, have come to declare other statutes invalid merely because the judges disapprove the policy of such legislation." And what is the result of such practice on the part of the courts? Mr. Roe answers thus (p. 178): "In the conflict between the people and the beneficiaries of special privilege, the courts have, according to popular belief, at least, ranged themselves on the side of the latter." The fault to be found with this sort of criticism is the fact that it represents the consequence of an act as inevitably furnishing its motive. Still it must be admitted that the courts have developed the modern silly and illogical doctrine of "due process of law" in the face of very powerful criticism by their own members. The remedy that Mr. Roe suggests is the freest sort of criticism of the courts and, if that proves unavailing, the recall of judges. The so-called "recall of judicial decisions" he condemns and in so doing falls into inconsistency; for on p. 219 he says: "The recall of judicial decisions means that the wholly untrained layman shall undertake to do, personally, the highly specialized and technical work of a judge"; but on p. 226 he writes thus: "It should not take a lawyer to determine in a given case whether two plainly written provisions of law—one a constitution, the other a statute—conflict or not, and if the question of whether there is conflict is so doubtful that judges divide almost equally upon it, the people have a right to believe that it is not the Constitution, but the preconceived notions of the judges with which the statue conflicts." Also, it is inconsistent for Mr. Roe to condemn (p. 171) Chief Justice Marshall for refusing in *Fletcher* v. *Peck* to enter upon the question whether some of the legislation under review in that case was procured by fraud. Had Marshall held otherwise, the courts would indeed possess an indefinite power in dealing with statutes. It is, of course, an error to say that the constitutional decision in *Marbury* v. *Madison* "was not necessary to the decision of the case." The *obiter dictum* portion of Marshall's opinion in *Marbury* v. *Madison* was the expression with reference to the duty of defendant in the premises. It is also erroneous to speak of this decision as "usurpation." Mr. Roe's complaint against the judges is that they don't think the way the rest of society does, which is more or less true. But, there was never a decision handed down by any court more in harmony with the popular view of the matter dealt with than Marshall's decision in *Marbury* v. *Madison*. Even Thomas Jefferson accepted it without demur, though girding bitterly at the *obiter dictum*.

E. S. CORWIN.

Henry Demarest Lloyd. 1847–1903. A Biography. By Caro Lloyd. With an Introduction by Charles Edward Russell. (New York: G. P. Putnam's Sons. 1912. Two volumes. Pp. xviii, 308; ix, 390.)

Of the biography which is one of the most important sources of history the United States as yet has very little. In England this kind of biography is abundant and of immense importance. Every statesman and almost every man who has had any prominent part in politics, in science, in literature or in journalism becomes the subject of a biography within a few years after his death; and in the story of his life, and the letters and papers included by his biographer, the historian finds the best records of much of the political, economic and social history of the day. A biography of this character and usefulness to the historian of the United States during the era when Big Business was coming into existence and into control, and one moreover which is worthy to rank with the standard English biographies, is Miss Caro Lloyd's life of Henry Demarest Lloyd. It is too soon as yet to estimate Lloyd's part in the awakening of the public conscience to the evils of the individualistic system under which the United States reached its great material development of the nineteenth century. It is therefore of special importance to have a true picture of the man as reflected in his private letters as well as in his published writings. It is of great value to the future historian to be able to ascertain how men regarded the trusts when they first came into existence, and what forces were at work to arouse sympathy for the workers who were put into a new and highly disadvantageous position by the concentration of capital, and to awaken the first consciousness of the class problems which Americans used to imagine could never arise in the new world. Miss Lloyd has done her work as biographer with care and skill, and with the sympathy without which no good biography can be written. In an appendix she gives a fairly exhaustive list of all her brother's writings, books, pamphlets, magazine and newspaper articles, whether signed or anonymous, and also of addresses made by him, making a complete record of the contribution made by Henry Demarest Lloyd to American social and economic history.

Edward Porritt.

Why Should We Change Our Form of Government? By NICHOLAS MURRAY BUTLER. (New York: Charles Scribner's Sons. 1912. Pp. xiv, 159.)

The six addresses composing this small volume have been delivered upon various occasions during the past five years. The first is entitled; Why Should We Change Our Form of Government? This is the only one which is devoted primarily to answering the title of the book. The other five addresses, which incidentally answer the title, are: Business and Politics, Politics and Business, The Call to Citizenship, Alexander Hamilton, and The Revolt of the Unfit. The author sees the United States changing from a representative republic to a socialistic democracy. This he deplores. Instead of making our representatives mere mouth-pieces of their constituents, he would have them the brains. By giving power and dignity to legislators, he would attract men of brains and honor to the legislatures. History teaches him that no other form of government equals the representative republican type. He believes that principles of government were never understood by a body of men as they were understood by the framers of our federal constitution; and that a departure from the principles there embodied is not progressive but reactionary, a change to the principles which history teaches us to be false. The initiative, referendum, and recall are condemned because they "strike the heaviest possible blow at representative institutions." "The principle of the recall, when applied to the judiciary," he considers "much more than a piece of stupid folly." And even when applied to executive officers he sees no good in it. If our constitution had provided for the recall, he says, "George Washington would have been recalled at the time of the Genet episode . . . ; Abraham Lincoln would almost certainly have been recalled in the dark days of 1862 and 1863; Grover Cleveland would have been recalled by an overwhelming vote in the summer of 1893 when he was making his fight for a sound financial policy and system."

Throughout, the views of the author are extremely conservative. The Sherman anti-trust law, be holds, should not be amended but supplemented, because "it has been subjected to twenty years of the most careful . . . legal and judicial examination." "The man who attempts to amend that law will make it worse," he continues. Again, "Troubles do not arise from the size of the corporations, . . . but they arise from individual delinquents; and we need no more law than we now have to get at individuals who commit immoral offenses, dishonorable acts, whether in trade or out of it."

F. A. MAGRUDER.

The Underlying Principles of Modern Legislation. By W. JETHRO BROWN. (London: John Murray. 1912. Pp. 331.)

Professor Brown has prepared an essay which, in some respects, is similar in purpose to Dicey's *Law and Public Opinion in England in the Nineteenth Century,* and, impliedly at least, criticizes the analysis of that work. His title refers to underlying principles. His thesis is, however that one fundamental principle has underlain legislation in England during the last hundred years—a principle deeper than the antagonisms of parties or the differences of political schools. This single dominating influence or ideal which unconsciously rather than consciously has given unity to the laws of modern England is declared to be that of liberty. "Broadly speaking," he says, "the legislation of the Nineteenth Century may be divided into three groups of statutes according as the immediate purpose of the legislature has been to establish democratic institutions, to secure to the citizen an immunity from undue state interference, or to extend social and individual responsibility. These purposes are to some extent concurrent, but they acquire their maximum influence in the order indicated—Each of these purposes is no more than a special phase of a general movement towards liberty—that liberty is sought at one time in a form of polity, at another time in the protection of the subject from the tyranny of political institutions, and yet another time in various forms of state control." In thus predicating a single underlying principle, Professor Brown is clearly criticizing Dicey, for he says in another place: "We have to deal, not, as one eminent writer suggests, with successive and unrelated currents of opinion, but with a single movement, in the course of which there has been a progressive realization of the nature of the goal towards which the national life is slowly traveling."

Starting with the very broad definition which he gives to the concept liberty, namely, that it consists "less in the form of government or in the number of laws that control the action of the citizen, than in the extent to which the citizen is assured the means of self realization," and that, in consonance with its aims the few may be restrained in the interests of the liberty of the many, that the many may, in some cases, be restrained in the interest of the few, and that, indeed, the freedom of the individual may be promoted by legal restraints imposed in his own interest—giving such a connotation as this to the idea of liberty, the author has little difficulty in establishing his principal thesis. The careful analysis of modern legislation which follows is of undoubted value in interpreting, from this single point of view, the legislative activity of modern times. In the reviewer's opinion, however, it does not tend in any serious degree to demonstrate that Dicey in his treatise has failed to exhibit the real *Tendenz* of this legislation.

In a concluding chapter entitled "The Outlook," the problems of today and tomorrow are considered, the trust, unemployment, the non-living wage, and the protection of the child receiving especial attention. The future does not appear to Professor Brown as free from dangers. Indeed, he sees upon the horizon "the dark menace of grave dangers which are rapidly taking shape"—dangers which can only be escaped by the wisest statesmanship. To resist successfully the forces which he finds now actually at work, it is declared that there is needed a truer civic education of the citizen; one that will arouse his sympathy, create a social spirit, and beget a better co-operation of all classes.

By way of a Prologue there is a chapter entitled "The Challenge of Anarchy," which, however, seems to bear no very intimate relationship to the body of the work. A careful analytical table of contents is provided, but no index.

The Political Theories of Martin Luther. By LUTHER HESS WARING. (New York: Putnams. 1910. Pp. vi, 293.)

After a description of the Germany of Luther's day, the author enters upon various important topics in political science and endeavors to show by citations from Luther's writings the positions taken by that reformer. His views are not formulated in any connected treatise on the theory of the State but a compilation of detailed expressions exhibit the principles upon which he seemed to act. The author organizes the matter in a final summary, by which it appears that Luther was of the opinion that the State was of divine origin but its form was a matter for human determination. The sovereignty of the State is exclusive, not shared by the Church, and, furthermore, the State is not simply a sword in the interest of the Church. The object of the State is to maintain peace, and its powers should be used in the interest of all, not for the benefit of special classes. It is the duty of the State to educate youth both in secular and religious matters. It should care for the poor, protect the people against monopolies and extortion, and should suppress gambling and immorality. Freedom of conscience, liberty of speech and of the press are inalienable rights of every individual.

It is important to know the political views of the man who wrought such changes in religious associations, and the author has performed good service in assembling Luther's expressions, but it is difficult to count him as a contributor to political science. The book attempts this by giving a resumé of the various topics from Aristotle to the present, but remains, to say the least, unconvincing.

J. M. VINCENT.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

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UNITED STATES[1]

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CONSTITUTION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

ARTICLE I.

NAME.

This Association shall be known as the American Political Science Association.

ARTICLE II.

OBJECT.

The encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III.

MEMBERSHIP.

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may contimue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV.

OFFICERS.

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually, and of an Executive Council consisting ex-officio of the officers above mentioned and fifteen elected members, whose term of office shall be three years. These elected members shall be divided into three groups of five each, the term of membership of one of such groups expiring each year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V.

Duties of Officers.

The President of the Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint Committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI.

Resolutions.

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII.

Amendments.

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

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Roden, Mrs. B. F., Marvel, Bibb Co., Ala.
Roe, A. A., General Delivery, Wichita, Kan.
Rogers, F. Theo., 100 Magallanes, Manila, P. I.
Rogers, W. A., 547 N. Euclid Ave., Oak Park, Ill.
Rojas, P. Ezequiel, 1017 16th St., Washington, D. C.
Rolf, A. A., 9 South La Salle St., Chicago, Ill.
Rose, John C., 311 P. O. Bldg., Baltimore, Md.
Rosenbaum, M., 605 S. 3rd St., Philadelphia, Pa.
Rosengber, Lewis J., 719–720 Majestic Bldg., Detroit, Mich.
Rosenthal, Lessing, 4245 Drexel Bldg., Chicago, Ill.
Ross, John M., Prescott, Ariz.
Rossiter, W. S., care of Rumford Press, Concord, N. H.
Rowe, Leo S., University of Pennsylvania, Philadelphia, Pa.
Rudd, Channing, 15 Wall St., New York City.
Ruddock, Albert B., 54 Wall St., New York City.
Rugg, Arthur P., 488 Pleasant St., Worcester, Mass.
Ruick, N. M., Overland Bldg., Boise, Ida.
Russell Sage Foundation, Room 20, 289 Fourth Ave., New York City.

Rutter, Frank R., Bureau of Manufactures, Dept. of Commerce and Labor, Washington, D. C.
Ryder, Thomas J., Avenida Juarez, No. 94, Apartado 1203, Mexico D. F., Mex.
Ryland, William James, West Va. Wesleyan College, Buckhannon, W. Va.
Ryman, James H. T., Western Montana National Bank, Missoula, Mont.

Saby, R. S., 407 Dryden Road, Ithaca, N. Y.
Sachs, Paul J., 60 Wall St., New York City.
Sachs, Ralph L., 28 West 22d St., New York City.
Sacramento Free Public Library, Sacramento, Cal.
Sage, Dean, 49 Wall St., New York City.
Sait E. M., Faculty Club, Columbia University, New York City.
Salomon, Alberto, Ayacucho, 410, Izquierda, Lima, Peru.
Samson, Harry G., 433 6th Ave., Pittsburgh, Pa.
Sanborn, A. L., 210 Langdon St., Madison, Wis.
Sanborn, J. B., Wisconsin Bldg., Madison, Wis.
Sands, William Franklin, care of State Department, Washington, D. C.
Sanford, Henry Grusevoort, 112 E. 64th St., New York City.
Santos, José A., San Fernando, Pampanga, P. I.
Sargent, Thornton W., 410–412 Barnes Bldg., Wichita, Kan.
Sather, Charles A., Bellingham, Wash.
Saulsbury, Willard, 907 Market St., Wilmington, Del.
Sawtell, J. H., Iola, Kan.
Sawyer, Joseph H., Williston Seminary, Easthampton, Mass.
Saxe, Martin, 21 Chambers St., New York City.
Scalise, Guiseppe, Catanzaro, Italy.
Schaffner, Margaret A., care of R. R. Commission of Wis., Madison, Wis.
Schaper, William A., University of Minnesota, Minneapolis, Minn.
Schapiro, Jacob S., College of the City of New York, New York City.
Scherr, Harry, Williamson, W. Va.
Schmeckebier, L. F., 1444 Belmont St., Washington, D. C.
Schmidt, Frederick W., Olympia, Washington.
Schmidt, L. B., Iowa State College, Ames, Ia.
Schmitt, Bernadotte E., Western Reserve University, Cleveland, O.
Schofield, William, 136 Summer St., Malden, Mass.
Scholefield, E. O. S., Legislative Library, Victoria, B. C.
Schouler, James, Intervale, N. H.
Schubring, E. J. B., Jones and Schubring, Madison, Wis.
Schutt, W. E., 139th St. and Convent Ave., New York City.
Schwartz, J. L., P. O. Box 594, Pittsburgh, Pa.
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Scott, Charles, Rosedale, Miss.
Scott, G. W., Columbia University, New York City.
Scott, J. B., Carnegie Place Foundation, Washington, D. C.
Scott, R. B., care of Burlington Railway, Legal Department, Chicago, Ill.
Scroggs, W. O., Louisiana State University, Baton Rouge, La.
Scull, Charles O., 210 Ridgewood Road, Roland Park, Md.
Seaton, Fay N., 304 Senate Office Bldg., Washington, D. C.

Seattle Public Library, Seattle, Wash.
Sedgwick, S. H., Supreme Court Chambers, Lincoln, Neb.
Seevers, George W., Gen. Counsel M. & St. L. R. R. Co., Minneapolis, Minn.
Seligman, Edwin R. A., Columbia University, New York City.
Senties, Pedro J., 2A de Arquitectos, No. 1, City of Mexico, Mex.
Serra, Manuel Rodriguez, San Juan, Porto Rico.
Seymour, H. O., care of Wisconsin Telephone Company, 230 W. Washington St., Chicago, Ill.
Shambaugh, B. F., State University, Iowa City, Ia.
Sharp, George M., 2105 St. Paul St., Baltimore, Md.
Shaw, Albert, 13 Astor Place, New York City.
Shaw, O. W., Austin, Minn.
Shea, James E., Tremont Bldg., Boston, Mass.
Shearer, Augustus H., Hamilton College, Clinton, N. Y.
Sheldon, A. E., Lincoln, Neb.
Shepard, Charles E., 614 New York Bldg., Seattle, Wash.
Shepard, Edward M., 128 Broadway, New York City.
Shepard, Harvey N., 53 State St., Boston, Mass.
Shepard, Walter J., 807 Virginia Ave., Columbia, Mo.
Shephard, W. H., 214 W. 32d St., Minneapolis, Minn.
Sherman, Gordon E., Yale University, New Haven, Conn.
Sherwood, Herbert Francis, Editorial Rooms, New York Tribune, New York City.
Sherwood, W. E., 1400 Continental Bldg., Baltimore. Md.
Shield, Wallace B., 1221 Woodland Ave., Kansas City, Mo.
Shipman, H. R., 27 Mercer St., Princeton, N. J.
Shippee, Lester Burrell, Pacific University, Forest Grove, Ore.
Shortt, Adam, Civil Service Commission of Canada, Ottawa, Can.
Siebert, Wilber Henry, Ohio State University, Columbus, Ohio.
Simmons College Library, Boston, Mass.
Simon, Franklin, 95 Riverside Drive, New York City.
Simpson, Jas. T., 1207 H. St., N. W., Washington D. C.
Singewald, Karl, 318 S. Broadway, Baltimore, Md.
Sioussat, St. George L., Vanderbilt University, Nashville, Tenn.
Sioux City Public Library, Sioux City, Ia.
Sites, C. M. Lacey, Anglo-Chinese College, Foochow, China.
Skelton, O. D., Queen's University, Kingston, Can.
Smalley, H. S., University of Michigan, Ann Arbor, Mich.
Smiley, Daniel, Mohonk Lake, Ulster Co., N. Y.
Smith College Library, Northampton, Mass.
Smith, George C., 116 Utica St., Ithaca, N. Y.
Smith, George H., 508 Deserel News Bldg., Salt Lake City, Utah.
Smith, J. Allen, 4533 15th. Ave., N. E., Seattle, Wash.
Smith, Luther Ely, 1718 Pierce Bldg., St. Louis, Mo.
Smith, Milton W., 413 Failing Bldg., Portland, Ore.
Smith, Monroe, Columbia University, New York City.
Smith, Sam Ferry, Union Bldg., San Diego, Cal.
Smithers, William W., 1100 Land Title Bldg., Philadelphia, Pa.

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Sobral, Enrique Martinez, Mexico, D. F., Mex.
Somerville Public Library, Somerville, Mass.
Southern California, Library of University of, Los Angeles, Cal.
Sparling, S. E., Rensselaer, Ind.
Speer, Emory, Macon, Ga.
Spencer, C. W., 114 Fitz Randolph Road, Princeton, N. J.
Spencer, Henry Russell, Ohio State University, Columbus, O.
Speranza, Gino C., 40 Pine St., New York City.
Spingarn, J. E., 9 W. 73rd St., New York City.
Springfield City Library Assn., Springfield, Mass.
St. Paul Public Library, St. Paul, Minn.
Stanclift, Henry C., Cornell College, Mt. Vernon, Ia.
Stebbins, Homer A., Livingston Hall, Columbia University, New York City.
Steele, G. F., Port Edwards, Wood Co., Wis.
Steiner, Bernard, C., Enoch Pratt Library, Baltimore, Md.
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Stern, David, Greensboro, N. C.
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Stockbridge, Henry, Gunther Bldg., Baltimore, Md.
Stokely, J. F., Glen Iris Park, Birmingham, Ala.
Stokes, J. G. Phelps, 100 William St., New York.
Stoll, Richard C., Lexington, Ky.
Stone, A. H., Dunleith, Miss.
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Storey, Moorfield, 735 Exchange Bldg., Boston, Mass.
Story, Russell M., Monmouth, Ill.
Stowell, E. C., University of Pennsylvania, Philadelphia, Pa.
Stratton, Daniel, Neosho, Mo.
Straughan, Wm. R., Millersville, Pa.
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Sullivan, J. J., Central National Bank, Cleveland, O.
Sullivan, W. C., 410 Fifth St., N. W., Washington, D. C.
Swain, H. H., Montana State Normal College, Dillon, Mont.
Swarthmore College Library, Swarthmore, Pa.

Swayze, Francis J., 765 High St., Newark, N. J.
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Takamine, Jokichi, 550 W. 173d St., New York City.
Talbot, C. H., Dept. of Legislative Reference, City Hall, Kansas City, Mo.
Talkington, Henry L., Lewiston State Normal School, Lewiston, Idaho.
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Taussig, Frank W., 2 Scott St., Cambridge, Mass.
Taylor, Archibald H., Harvest Road, Roland Park, Md.
Taylor, Daniel G., Third National Bank Bldg., St. Louis, Mo.
Taylor, Frederick C., Stamford, Conn.
Taylor, Graham, Chicago Theological Seminary, Hammond Library, 1610 Warren Ave., Chicago, Ill.
Temple, Henry, 400 Locust Ave., Washington, Pa.
Texas, University of, Austin, Texas.
Thacher, George A., 338 Tillamook St., Portland, Ore.
Thacher, Thomas, 62 Cedar St., New York City.
Thacher, Thomas D., 863 Park Ave., New York City.
Thomas, J. Hanson, 1010 St. Paul St., Baltimore, Md.
Thompson, Frederic L., Amherst College, Amherst, Mass.
Thompson, J. David, Law Library, Columbia University, New York City.
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Thompson, M. W., 509 E. Greene St., Champaign, Ill.
Thompson, Slason, 1409 Railway Exchange Bldg., Chicago, Ill.
Thompson, W. B., 1621 S St., N. W., Washington, D. C.
Thomson, Edith, 449 N. Boulevard, Atlanta, Ga.
Thornley, Wm. K., 28 Cushing St., East Side Sta., Providence, R. I.
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Thurston, Edward S., 1212 Fifth St., S. E., Minneapolis, Minn.
Tiffany, Edward Orrin, Western Maryland College, Westminster, Md.
Todd, Albert M., Kalamazoo, Mich.
Tomlin, J. G., Walton, Ky.
Tooke, Charles W., 12 Syracuse Bank Bldg., Syracuse, N. Y.
Toulmin, H. A., Jr., University, Va.
Treat, Payson J., Stanford University, Cal.
Trellas, Carlos M., Manzano 109, Matanzas, Cuba.
Trinity College Library, Durham, N. C.
Tryon, Charles J., 2115 Girard Ave., South, Minneapolis, Minn.
Tryon, James Libby, 31 Beacon St., Boston, Mass.
Tucker, H. R., 110 Bompart Ave., Webster Groves, Mo.
Tufts College, Library of, Tufts College, Mass.
Tulane University Library, St. Charles Ave., New Orleans, La.
Turner, Frederick J., 153 Brattle St., Cambridge, Mass.

UPDYKE, FRANK A., Dartmouth College, Hanover, N. H.
UPSON, L. D., 26 Jones St., New York City.
U'REN, WM. S., Oregon City, Ore.
USERA, J. HERNANDEZ, San Juan, Porto Rico.
USHER, ELLIS B., 1136 Wells Bldg., Milwaukee, Wis.

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VAN DYNE, FREDERICK, Dept. of State, Washington, D. C.
VARIAN, E. S., 235 South 6th East St., Salt Lake City, Utah.
VASSAR COLLEGE, LIBRARY OF, Poughkeepsie, N. Y.
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VAUGHAN, ATHELSTAN, 9 Jackson Ave., Long Island City, N. Y.
VAUGHAN, JOHN H., Agricultural College, New Mex.
VERRIL, H. M., 191 Middle St., Portland, Me.
VERPLANCK, J. DE L., Fishkill-on-Hudson, N. Y.
VERT, C. J., 45 Broad St., Plattsburgh, N. Y.
VILAS, CHARLES A., Box 53, Evanston, Ill.
VILLARD, O. G., 20 Vesey St., New York City.
VINCENT, GEORGE E., University of Chicago, Chicago, Ill.
VINCENT, JOHN MARTIN, Johns Hopkins University, Baltimore, Md.
VINEYARD, J. J., 3643 Wyandotte St., Kansas City, Mo.
VINSON, Z. T., Huntington, W. Va.
VROOMAN, CARL S., Kenilworth, Ill.

WADDELL, W. G., Webster, S. D.
WAKEMAN, GEORGE BULKELEY, Moodus, Conn.
WALDMAN, MORRIS D., 356 Second Ave., New York City.
WALKER, LEGARÉ, Summerville, South Carolina.
WALLACE, BENJAMIN B., Ann Arbor, Mich.
WALLIN, WM. J., 16 Livingston Ave., Yonkers, N. Y.
WALLING, W. E., Cedarhurst, L. I., New York.
WALMSLEY, JAMES ELLIOTT, Millsaps College, Jackson, Miss.
WALRATH, A. L., 311 North Johnson St., Macomb, Ill.
WALSH, JAMES A., Helena, Mont.
WALSH, THOMAS F., Colorado Bldg., Washington, D. C.
WAMBAUGH, EUGENE, Harvard University Law School, Cambridge, Mass.
WARD, GEORGE CABOT, San Juan, Porto Rico.
WARFIELD, GEORGE A., Dakota Wesleyan University, Mitchell, S. D.
WARREN PUBLIC LIBRARY, Warren, O.
WASHBURN, CHARLES G., 390 Main St., Worcester, Mass.
WASHINGTON AND LEE UNIVERSITY, LIBRARY OF, Lexington, Va.
WASHINGTON STATE COLLEGE, LIBRARY OF, Pullman, Wash.
WASHINGTON STATE LAW LIBRARY, Olympia, Wash.
WASHINGTON STATE LIBRARY, Olympia, Wash.
WATCHORN, ROBERT, Security Bldg., Los Angeles, Cal.
WATSON, DAVID K., Chamber of Commerce, Columbus, O.
WEAVER, JAMES R., DePauw University, Greencastle, Ind.

Wellesley College Library, Wellesley, Mass.
Wellington, Raynor G., P. O. Box 1271, Vermillion, S. D.
Wellington, Stanwood G., 27 Circuit Road, Chestnut Hill, Mass.
Wells, Amos R., 40 Williston Road, Auburndale, Mass.
Wells College Library, Aurora, N. Y.
Wesleyan University, Middletown, Conn.
West Virginia University, Library of, Morgantown, W. Va.
Weston, N. A., 601 Daniel St., Champaign, Ill.
Weston, Stephen F., Yellow Springs, Ohio.
Weyl, Walter E., Woodstock, N. Y.
Whallon, Archer P., Stockbridge, Ingham Co., Mich.
Wheelright, Wm. D., Portland, Ore.
Whinery, Charles C., 29 W. 32d St., New York City.
White, Elizabeth B., Hotel Racine, Columbus, Ga.
White, John B., 1111 Long Bldg., Kansas City, Mo.
White, J. LeRoy, 2400 W. North Ave., Baltimore, Md.
White, Luther, Chicopee, Mass.
White, Melvin J., 1004 Webster St., New Orleans, La.
White, William G., 767 Goodrich Ave., St. Paul, Minn.
Whiteley, Richard H., Boulder, Colo.
Whitney, Travis H., Tribune Bldg., New York City.
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Wilcox, Delos F., Public Service Commission, New York City.
Wilgus, H. L., 1547 Washtenau Ave., Ann Arbor, Mich.
Wilgus, James Alva, State Normal School, Platteville, Wis.
Wilkinson, H. S., 720 Onondaga Bank Bldg., Syracuse, N. Y.
Willard, E. S., 33 Park Ave., New York City.
Willard, James F., 1513 Spruce St., Boulder, Colo.
Willcox, P. A., Florence, S. C.
Willcox, W. R., 10 E. 57th St., New York City.
Willets, Elmore A., Belmont, N. Y.
Williams, Ellis D., 560 Drexel Bldg., Philadelphia, Pa.
Williams, E. Randolph, 826 W. Franklin St., Richmond, Va.
Williams, G. C. F., 990 Prospect Ave., Hartford, Conn.
Williams, Ira Jewell, 1005 Morris Bldg., 1421 Chestnut St., Philadelphia, Pa.
Williams, Joel Clifton, 536 Washington St., Dedham, Mass.
Williams, John G., 1211 N. Delaware St., Indianapolis, Ind.
Williams, P. L., Deseret News Bldg., Salt Lake City, Utah.
Williams, T. S., Huntington, L. I.
Williamson, C. C., 476 Fifth Ave., New York City.
Willoughby, William F., White House, Washington, D. C.
Willoughby, W. W., Johns Hopkins University, Baltimore, Md.
Wilmington Institute, Library of, Wilmington, Del.
Wilson, George Grafton, Harvard University, Cambridge, Mass.

Wilson, Hugh M., 1224 Great Northern Hotel, 118 W. 57th St., New York City.
Wilson, J. E., 332 Fifth Ave., Chicago, Ill.
Wilson, Scott, 55 Beacon St., Woodfords, Me.
Wilson, Woodrow, Princeton, N. J.
Winston, James Edward, Austin College, Sherman, Texas.
Wisconsin, Library of University of, Madison, Wis.
Wolf, Adolph G., San Juan, Porto Rico.
Wolff, Solomon, 909 Canal-Louisiana Bldg., New Orleans, La.
Wood, Frank H., Hamilton College, Clinton, N. Y.
Wood, Frederick A., 295 Pawtucket St., Lowell, Mass.
Wood, Stuart, 400 Chestnut St., Philadelphia, Pa.
Woodburn, James Albert, Indiana State University, Bloomington, Ind.
Woodhouse, Edward J., London Bridge, Va.
Woodin, G. W., 319 Central Ave., Dunkirk, N. Y.
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Woods, Frank H., 1220 South 20th St., Lincoln, Neb.
Woods, J. H., Corsicana, Texas.
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Woodward, Frank E., 48 Abbott Road, Wellesley Hills, Mass.
Woodward, S. W., 2015 Wyoming Ave., Washington, D. C.
Woodworth, Arthur Heath, William and Vashti College, Aledo, Ill.
Worcester Library, Worcester, Mass.
Wormser, I. Maurice, University of Illinois, Urbana, Ill.
Wrong, G. W., University of Toronto, Toronto, Can.

Yale Law Library, New Haven, Conn.
Yancey, David W., Manila, P. I.
Yeomans, Henry A., 72 Trapels Road, Belmont, Mass.
Youmans, F. A., Fort Smith, Ark.
Young, Allyn A., Washington University, St. Louis, Mo.
Young, Hugh, Waln and Grant Sts., Wellsboro, Pa.
Young, H. O., The Portland, Washington, D. C.
Young, J. S., University of Minnesota, Minneapolis, Minn.
Young, James T., University of Pennsylvania, Philadelphia, Pa.

Zumoto, Motosada, 35 Nassau St., New York City.

REPORT OF THE SECRETARY OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION FOR THE YEAR 1911

The Eighth Annual Meeting of the Association was held at Buffalo, New York, and Toronto, Ontario, December 27–30, 1911. In Buffalo the headquarters of the Association were the Hotel Statler. In Toronto the one session was held at the University of Toronto.

The opening meeting was held jointly with the American Historical Association and was devoted to the presidential addresses of the two Associations and to the speech of welcome delivered by Mr. Henry W. Hill, President of the Buffalo Historical Society. The address of Governor Simeon E. Baldwin, President of the American Political Science Association, was entitled "The Progressive Unfolding of the Powers of the United States," and is published in the February, 1912, issue of the *Review.*

At the Annual Business Meeting of the Association, held December 29, the Secretary reported a continued increase in the membership of the Association, the total enrollment then approximating sixteen hundred.

The treasurer reported that the receipts for the current year had exceeded the expenditures by approximately $400, this surplus being applied in payment of a debt of $800 of the Association.

The following Resolutions and Actions taken by the Executive Council of the Association were reported by the Secretary.

The Managing Editor of the *Review* was authorized to increase the number of pages of each issue of the *Review* to 176.

It was voted that in the future the Proceedings of the Association be published as a Supplement to the *Review* and issued, if possible, with the February number, but that provision be made for supplying copies bound uniformly with previous volumes to members of the Association so requesting and paying the extra cost. Such cost, it was announced, would not exceed 40 or 50 cents per copy.

The question of increasing the annual dues of the Association had been seriously discussed, but the matter had been laid upon the table.

It was voted that the next Annual Meeting of the Executive Council and Board of Editors, of November, 1912, should be held in Chicago.

The question as to whether the Constitution should be amended so as to make Ex-Presidents of the Association *ex-officio* members of the Council, was laid upon the table.

The Secretary was instructed to have prepared gavels for the use of the Presidents of the Association at its Annual Meetings, such gavels to become the property of the several Presidents.

It was voted that no person should occupy at the same time the position of elected Councilman and member of the Board of Editors of the *Review.*

It was voted that a General Committee be established, the members of which should be selected, as far as possible, from the several States of the United States and the District of Columbia and the several Provinces of the Dominion of Canada.

It was voted that a Committee on Appointments be established, to consist of the Secretary of the Association as Chairman and two other members of the Association to be named by the President, whose duty it should be to appoint such Special and Standing Committees and Boards as may from time to time be created by the Council. The President thereupon appointed upon such Committee, in addition to the Chairman, Professors B. F. Shambaugh and A. R. Hatton. This Committee was also specially authorized to appoint such Special Committees as it might deem proper to investigate subjects and report upon the same to the Council for such action thereupon as it might think fit.

It was voted that a Committee of Seven Members be appointed to consider the methods of teaching and studying governments now pursued in American schools, colleges and universities and to suggest means of enlarging and improving such instruction.

It was voted that a Commission of Five Members be appointed to study existing State Constitutions, and draw up, so far as may seem profitable, standard constitutional provisions which may serve as aids to the States in undertaking a revision of their several instruments of government.

It was voted that the Council authorize the President of each year to appoint a Programme Committee of not more than five members to prepare the programme for the session at which he is to preside, the Secretary of the Association to be a member of the Committee.

It was voted that the Council authorize the President of each year to appoint a Committee on Local Arrangements for the session at which he is to preside and to co-operate with sister societies meeting at the same times and places.

It was voted that a sum, not to exceed $250, be appropriated in part payment of the traveling expenses of members of the Council and of the Board of Editors of the *Review* attending the November meeting in 1912, each member to be allotted the same percentage of his railroad fares and necessary Pullmans in excess of $10.

It was voted that the Council appropriate $100, or as much thereof as may be found necessary, for the year 1912, for the postage and necessary clerical expenses of the General Committee.

It was voted that if the resources of the Association permit, $25 be appropriated for clerical and postage expenses of the Committee on State Constitutions.

It was voted that the 1912 Meeting of the Association be held at Boston, Massachusetts during the last week of December. It was also voted that, if possible, the session for 1913 be held at the same time and place as the American Economic Association.

Professors Jesse Reeves and A. R. Hatton were elected as members of the Board of Editors to fill the places of Professors C. E. Merriam and John H. Latané, retiring.

The following Officers of the Association for the year 1912 were elected.

President, ALBERT BUSHNELL HART,
First Vice-President, ADAM SHORTT,
Second Vice-President, ERNST FREUND,
Third Vice-President, FRANCIS J. SWAYZE,
Secretary and Treasurer, W. W. WILLOUGHBY.

As members of the Executive Council, to serve until December 31, 1914, the following were elected.

CHARLES A. BEARD,
HERBERT CROLY,
J. ALLEN SMITH.
J. Q. DEALEY,
W. A. SCHAPER,

REPORT OF THE TREASURER FOR THE YEAR 1911

RECEIPTS

Balance on hand Dec. 22, 1910	$7.30
Annual dues	3,770.00
Life memberships	150.00
Subscriptions	231.00
Publications sold	474.74
	$4,633.04

EXPENDITURES AGGREGATED

Legislative Notes for Review	$100.00
Clerical assistance to Secretary and Treasurer	465.00
Printing, stationery and mailing	3,060.85
Expressage on Proceedings	167.24
Postage and office expenses of Secretary and Treasurer	343.41
Payment on Loan	400.00
Miscellaneous	74.40
Total expenditures	$4,610.90
Balance on hand, December 26, 1911	22.14
	$4,633.04

Submitted, December 22, 1911,
W. W. WILLOUGHBY, *Treasurer.*

Audited and found correct.
W. B. MUNRO,
B. F. SHAMBAUGH.

PAPERS AND DISCUSSION[1]

THE PROPOSED LEGISLATIVE CONSTITUTION OF INDIANA

BY J. P. DUNN

Sec'y Indiana Historical Society, Indianapolis, Indiana

It should be distinctly understood at the outset that the proposed constitution of Indiana is a means, and not an end. The chief cause of its existence was the desire of Democratic leaders of the state to purify the suffrage in Indiana. This was not wholly an altruistic motive. The more intelligent Democratic leaders have been convinced for years that the only safety of the party lay in honest elections. That is why, in 1889, Indiana became a leader in the adoption of the Australian ballot law, and the most stringent and efficacious bribery law that has ever been devised, both of which were adopted as Democratic party measures.

At the legislative session of 1911, the Democratic party, for the first time, in eighteen years, came into full possession of the legislative power of the state. During those eighteen years, every Democratic effort to purify elections had been gracefully and effectively smothered. But, in 1911, the Democrats found their opportunity blocked by a legal complication. The constitution of the state fixes the qualifications of voters, and these can neither be added to nor taken from by statute law. To amend the constitution, the proposed constitutional amendment must be adopted by two successive legislatures, and by a majority vote of the people.

But the constitution also provides that when one amendment is pending, either before the legislature or before the people, no other amendment can be submitted. In 1897, a comparatively unimportant amendment was introduced, providing that the legislature might prescribe qualifications for admission to the bar. It was adopted by two legislatures, and has been submitted to the people three times—in 1900, 1906 and 1910—and each time there was no majority of the votes for or against it. Our supreme court has decided that an amendment, once submitted, remains pending until a majority vote for or against it, and therefore no other amendment can be introduced while that situation exists (69 Ind. 505., 156 Ind. 104).

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[1] The Presidential Address of Governor Baldwin entitled *The Progressive Unfolding of the Powers of the United States* appears in the AMERICAN POLITICAL SCIENCE REVIEW, February, 1912.

In this emergency, Governor Marshall suggested that, while the legislature had no power to propose an amendment, it had power to submit to the people a new constitution, which is an entirely different thing. The existing constitution makes no provision whatever for the adoption of a new constitution beyond the general declarations that "The people have at all times an indefeasible right to alter and reform their government," and "The legislative authority of the State shall be vested in the General Assembly."

So far as I am informed, nobody disputes that the legislature has power to call a constitutional convention, although the constitution makes no mention of it; and this has been done in a number of states similarly situated. But it is questioned that the legislature has power to submit a new constitution to a vote of the people directly; and this view has been taken by Judge Remster, of the Marion Circuit Court, before whom the question was raised. An appeal has been taken to the supreme court, and it is commonly assumed that it will decide in the same way, because a majority of the judges are Republicans. Judge Remster is a Democrat.

The central issue is this: The advocates of the proposed constitution hold "that the legislative authority of the State" is a common law term, borrowed from Great Britain, where it means the legislative power of Parliament, including power to amend or revise the constitution at will; that this power was originally exercised by the legislatures of the colonies, most of which adopted constitutions without submitting them to the people; and it was judicially recognized that succeeding legislatures had equal power to amend these constitutions (3 McCord, 354); that the only restraint on this power is by written constitutions; that the extent of this power in Indiana has been established by an unbroken line of decisions that: "The legislative authority of this State is the right to exercise supreme and sovereign power, subject to no restrictions except those imposed by our own constitution, by the Federal constitution, and by the laws and treaties made under it" (6 Blackford, 299; 101 Ind. 564; 163 Ind. 512, and cases cited); that the power of adopting a constitution is reserved to the people by the declaration above quoted; but that the mode of submitting a new constitution to the people, in the absence of any express constitutional provision, is purely a matter of legislative discretion, over which the courts have no jurisdiction.

Judge Remster's position is that the power to submit a new constitution to the people is not included in "the legislative power of the State," although there is no prohibition of such submission in the constitution; and that the attempt to submit it is void *ab initio.* He therefore enjoined the state election board from putting the question on the ballots, or, in other words, enjoined the people from exercising their inalienable right at this time.

It is not my purpose to discuss the legal aspects of the question, further than to say that Judge Remster's decision has not had the slightest effect in convincing any lawyer who has examined the question, and has once recognized the legislative power. There is simply a conflict of legal opinions; and that is nothing uncommon as to constitutional questions in this country. The American people have been disputing what the Federal constitution and the several state constitutions mean ever since they were adopted. These differences of constitutional opinion are what have made the great political parties of the country, and most of the politics of the country.

What I wish to present is some of the reasons for these differences of constitutional opinion; but before proceeding to that, attention may be called to two points:

1. If Judge Remster is right, we have been operating in Indiana for the last sixty years without a legally adopted constitution. Our first constitution was adopted in 1816, under an enabling act of Congress, by a convention elected precisely as the lower house of the Territorial legislature. This convention adopted our first constitution without submitting it to the people. The enacting clause reads: "We the representatives of the people of the territory of Indiana do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the State of Indiana." This first constitution provided that a vote of the people should be taken every twelfth year on the question of holding a constitutional convention. If the people favored it, and "a majority of all the members elected to both branches of the General Assembly" agreed to it, a convention was to be called, with "power to revise, amend or change the constitution."

No attention was ever paid to these provisions. The question of holding a convention was submitted to the people in 1828, but the report of the vote by the Secretary of State shows returns from only 10 of the 58 counties, the total being 3496 for, and 6130 against a convention. (House Journal, 1828–9, p. 559.) In 1840 the question was again submitted, with a result of 12,277 for, and 61,721 against, in 69 counties, 14 counties making no returns. (Doc. Journal, 1840, Doc. No. 12.) In the face of this vote of five to one, the question of further submission was agitated all through the forties, and another vote was taken in 1846, which resulted 33,175 for a convention and 28,843 against, a total of less than half of the 126,123 votes cast at the election.

Notwithstanding this record, and notwithstanding the opposition of legislators who urged that there was no constitutional right to submit the question except at a twelfth year period; (W. W. Thornton, in Report of Indiana Bar Association, 1902, p. 152) in 1849, the legislature submitted to the people the question of calling "a convention to alter, revise or amend the constitution," and the vote favored it. The next legislature provided for a convention, but for a convention not clothed with the powers provided for by the constitution and by the vote of the people. It was directed merely to draft a constitution for submission to the next legislature, which was done; and the next legislature submitted it to the people, with no more authority than is given by our present constitution.

The lack of constitutional authorization was recognized in the debates of the convention of 1851, but the action was defended on the ground that the constitution did not prohibit the mode followed (Debates, pp. 1938–39.). The convention and the people adopted that view, and it is exactly the view taken in numerous decisions of our supreme court, as quoted above.

2. Neither the decision of Judge Remster, nor one by the supreme court to the same effect, will stop this reform movement; because it is a moral reform movement, and such movements are not killed by court decisions, nor by any other obstacles, any more than the anti-slavery movement was stopped by the Dred Scott decision. They simply keep on growing and accumulating force by discussion and agitation. Like the waters of a flood, if they cannot find an outlet in one channel, they will find it in another; and if channels are too difficult to find, they wash out dams, and sweep on in their course, overwhelming everything that stands in their way.

The most commonly recognized division of constitutional opinion, or bias, is on the line of strict construction and liberal construction. In a general way, the Democratic party has been the party of strict construction, and its opponents, the Federalists, Whigs and Republicans, have stood for liberal construction. Properly, this division applies only to the Federal constitution and not to the state constitutions. The reason is that the United States is a government of delegated powers, the instrument of grant being the constitution itself; whereas the states retain all sovereign power not granted to the United States. Each state constitution divides its sovereign powers into three parts, and vests those powers in the executive, legislative and judicial departments. The remainder of each state constitution consists of limitations on the powers thus conferred. Hence, as to an act of Congress, the constitutional question is "Does the constitution authorize the act?" But as to a state legislature the question is "Does the constitution prohibit the act?" The principle of strict construction therefore has no application to a state constitution; and yet there are many persons who carry their ideas of strict construction into the consideration of the question of constitutionality of action by a state legislature. This is the obvious explanation of Judge Remster's decision, for he puts as strict a construction on the state constitution as John C. Calhoun ever put on the Federal constitution, and holds, not that this legislative action is prohibited, but that it is not included in "the legislative authority of the state."

The second cause of the divergence of constitutional opinion, or bias, is the nature of the reforms proposed. If one has paid attention to legislation in the United States, he must have been struck by the great number of repeal laws. Each one of these usually means that an attempt has been made to accomplish some purpose in a certain way, but that on practical trial it has either failed or has produced some bad result that was not contemplated. In other words, these are applications of superficial remedies. In England they do reform work more rationally than we do, because their government is more permanent, and because cabinet government involves a close connection between politics and government, inasmuch as the cabinet proposes the legislation. When a British cabinet contemplates a reform law, it usually begins by appointing a commission to study the question—not a one-sided commission, with preconceived ideas, nor a bipartisan commission which you know in advance will present majority and minority reports, each intended to bolster up some theory, but a commission of men of various points of view who endeavor to get at the facts, and to ascertain what is really wrong, before proposing a remedy—just as a good physician diagnoses his case carefully before he prescribes, and then adopts whatever remedy is needed. The object of this system is, of course, to ascertain the correct policy before committing the party in power to any policy.

Mr. Edwin Chadwick, whom I consider the wisest legislator of the last century, and who served on more than twenty of these British commissions, makes the astounding statement that he never knew an investigation "which did not reverse every main principle, and almost every assumed chief elementary fact, on which the general public, parliamentary committees, politicians of high standing, and often the commissioners themselves, were prepared to base legislation (The Health of Nations, Vol. I, p. 127.)."

The plain meaning of this is that in these cases the real source of evil was something not apparent on superficial examination, and the remedies originally contemplated were superficial remedies that did not reach the source of the evil at all. Very brief reflection will show the reason why this is true. Whenever an evil in government is persistent or chronic, it is because the source of the evil is obscure. If there were any plain, easily discovered remedy for it, that remedy would have been applied early, and the evil would never have become chronic. To make another medical illustration (for doctoring governmental ills is very much on the same principle as doctoring physical ills) you cannot cure a germ disease of the blood, that manifests itself through eruptions on the skin, by applying salves and lotions to the skin. You have got to find the germ and kill it in the blood; or, for prevention, you must kill it before it gets into the blood; and either of these is liable to involve some round-about method that invites skepticism. For example, if any one had told our grandfathers that the way to get rid of malaria was to kill mosquitoes, they would have hooted at the proposition.

In governmental affairs, the proposal of any new or unusual method always rouses the objections of those who do not want to get out of the rut; and they usually have some color of constitutional objection in the fact that the makers of the constitution could not have contemplated a thing if it is actually new. New measures must depend for their justification on general principles, and not on specific intent to provide for them.

It has been my fortune, or misfortune, to have been more or less connected with reform legislation for the last twenty-five years, and I do not recall an innovation, to correct an evil, that was not pronounced unconstitutional by a considerable body of citizens. When the Australian ballot law was adopted in Indiana, the worst obstacle we had to overcome was the idea, especially championed by David B. Hill, that suffrage was a natural right, and that a man had an inalienable right to vote for any one he preferred for any office; in consequence of which he could not be prohibited from writing a name on the ballot. The point was vital, because a written name was a common mode of identifying a vote that had been purchased. Argument that suffrage was not a natural right, but an artificial right, conferred by the state, had no effect but to raise a storm of indignant protest; and in 1891 a formidable amendment was made to the law, which allows any one to vote for whom he pleases by means of a paster ballot, which, however, is so cumbersome and expensive a method that nobody has ever attempted to use it. Since then most of the courts have reached the conclusion that suffrage is not a natural right, but there are some learned decisions on the subject that I would include in humorous literature, because to me the idea that a man can have a natural right to any artificial thing that is not the product of his own labor is too absurd to admit of discussion.

This seemingly indirect method of reaching evils is used in the two features of the proposed constitution that embody the most important changes offered by it. One is the effort to purify elections, first, by requiring an educational test for suffrage; second, by requiring the prepayment of poll taxes; and third, by restricting suffrage to citizens of the United States. The first is essential because if you allow illiterates to vote, you are obliged to allow some one to mark their ballots, which destroys the secrecy of the ballot, and affords an easy method for systematic vote-buying. The second is essential because a large part of the class who sell their votes are included in the class who do not pay their poll taxes. The common mode of buying votes by the taking out of poll tax receipts by political parties, is sought to be avoided by requiring the prepayment of poll taxes, without delinquency, both in the year of the election and in the year preceding. The third is also a class distinction. The constitution makers of 1851 gave suffrage, on six months' residence, to immigrants who had declared their intent to become citizens, for the avowed purpose of encouraging immigration to the state. But at that time the state had large amounts of unoccupied land, and the immigrants then coming became permanent residents; while in recent years there has appeared a large class of immigrants who have no real intent to become citizens, but only to accumulate enough money for comfortable living in their native countries; and who have no interest in a vote except to sell it. In fact, they are commonly "naturalized" in blocks, by political parties that have already bargained for their votes.

The other feature is the elimination of the gerrymander by making the county the basis of legislative representation. This was attacked as unconstitutional on the ground that it violated the provision of the Ordinance of 1787 guaranteeing "proportionate representation." The assailants of the constitution assumed that this meant numerical representation, such as we attempt at present, but it does not, for the simple reason that there was no such thing as numerical representation in existence in 1787, but all representation was based on the county, or on some other municipal division. Furthermore, it has been decided repeatedly, by the highest courts, that the Ordinance of 1787 is not in effect in any state, and its "forever unalterable articles of compact" remain only as they are preserved by the state constitutions (10 Howard, 82; 107 U. S., 689).

This brings us to the fourth cause of divergence of constitutional opinion, which is the idea that one generation can tie up future generations by any kind of law—the idea that there is something in constitutional government that cannot be changed. You have, of course, all read Daniel Webster's great answer to Hayne, in which he said that these unalterable articles of compact in the Ordinance of 1787 were deeper and stronger than any constitution, and that idea prevails with many people. The conclusive answer to this is the declaration of the constitution itself, that "the people have, at all times, an indefeasible right to alter and reform their government." No generation can take that right from its successors. The state would not be "sovereign" if it could. As Thomas Jefferson tersely put it: "The earth belongs to the living, and not to the dead" (Works, Vol. 3, p. 106; see also Writings, Vol. 15, p 40).

The fifth and last cause of divergence of constitutional opinion and bias, to which I shall call your attention, is that most of the American people do not really believe those things which we have declared to be axiomatic truths, and on which our whole theory of government rests. Our forefathers asserted in the Declaration of Independence that "all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness." The same thing was repeated in every state constitution in the Union. In the face of this, they maintained slavery, and justified depriving men of their inalienable right to liberty. It took more than half a century of bickering, and five years of bloody war to make the nation actually believe that all men have an inalienable right to liberty. Is it strange, in the light of that, that some people question the right of the people to change their constitution, when they wish to do so?

Among the "unalterable articles of compact" of the Ordinance of 1787, is the provision that "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." In the Indiana constitution of 1816, our forefathers dropped "religion and morality," and made it "knowledge and learning, generally diffused through a community, being essential to the preservation of a free government." This was repeated in the constitution of 1851. Do the people of Indiana believe this? It is what their common-school system is based on—not the benefit of education to the individual, but the benefit to the state. They are paying over $8,000,000 a year for free schools. They have a compulsory education law. They have truant officers to enforce attendance. If a child lack the clothing or books necessary for school attendance, the public supplies them. And yet we say to the Indiana boy who manages to evade the law, and to grow up illiterate, we will reward you by giving you the highest privilege of citizenship. Do we really believe this axiomatic truth of our constitution that education is essential to the preservation of free government? If we do there will be little hesitancy about making an educational test for suffrage.

While there are these reasons for divergent views as to the mode of action proposed, there is no reason for difference of opinion as to the ends sought to be attained by this proposed constitution. Any American who is fit for citizenship believes in honest elections, and ought to do what he can to secure them. I would urge this on the members of this association. You are men who influence political sentiment. You have a voice in the future of this country; and I urge you to stand firmly, always, and above all things, for honest elections. I say to you that the evil which is sapping the very life of this nation today is the corruption of the suffrage. It is the cause of nine tenths of the misgovernment we have; and so long as it continues, popular government is little more than a farce.

The evil is not restricted to Indiana. It exists in every state of the Union. And everywhere you see its effects recognized, and superficial remedies offered for them. Everybody realizes that something is wrong—that in some way popular government is not working out as it should. They see government controlled by associated interests, and political machines. They seek to remedy this by the introduction of direct primaries, by the initiative, referendum and recall, by commission government, by the short ballot. My friends, these are only salves applied to the skin to cure a blood disease. Think, for a moment. What do direct primaries amount to, if the voters are bought? What are the initiative, referendum, or recall if the appeal is to a debauched electorate? What is commission government, if the commissioners can buy their elections? What difference whether a man vote a long or a short ballot, if his vote is sold? Of what avail to try to control the "big business" of the country, so long as we allow it, by the supply of campaign funds, to buy the election of men who will serve it? The first and greatest requisite—the one without which all others amount to nothing—is the purification of elections.

I therefore ask every honest man to stand unflinchingly for honest elections. It is not very material whether a man believe that the legislature has power to propose a constitution or not. It is not very material whether a man call himself a Democrat, a Republican, or a Prohibitionist. But we are all American citizens, and it is material that, whatever else we may believe, we should believe in honest elections, as the only means of ascertaining the public will, and insuring free government. It is material that we should stand first of all for honest government, if we want this republic to live. It may take some years to impress this truth on the American people, because they are slow to learn, despite their intelligence. But it will come; and when the history of this period is written, in the clearer light of the future, no man will have a prouder record of statesmanship than this of having forcibly called public attention to the real cause of misgovernment, and having earnestly endeavored to remedy it, which has been done by Gov. Thomas R. Marshall, of Indiana.

THE TREND OF RECENT CONSTITUTIONAL CHANGES

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In papers read before this Association in 1906 and 1908, and in publications[1] issued subsequently by the writers of those papers, the modern trend in state constitutions was quite fully presented. The detail of changes during the last three years has been so well covered in numerous publications, that a reiteration in this paper would surely be tedious and unfruitful. It may be sufficient to say that our state constitutions are constantly changing through amendment, that the powers of legislatures are undergoing further restrictions, that the executive is very slowly enlarging his powers, that the increasing mass of litigation compels an expansion of judicial organization, and that there is a growing emphasis on direct as against indirect democracy. Moreover, the states are slowly learning the art of regulating more effectively the great corporate interests under their jurisdiction; local government in county and city is in process of reorganization; taxation, public finance and the building of state-roads are important issues; and political parties begin to realize that at last their days of freedom and license are well nigh past, since they see before them, as a sort of handwriting on the wall, the direct primary, the short ballot, laws against corruption, and the voting machine in place of complaisant returning boards. Moreover our many states, diverse and widely scattered though they are, for the most part show a trend towards uniformity through the rise of the study of comparative legislation. Much of the credit for this should be attributed to the influence of such bodies as the American Bar Association, the National Civic Federation, the Conferences of Governors and the rapidly multiplying Legislative Reference Bureaus.[2] A national association like this, also, bringing together as it does teachers and students in political science, should ultimately prove to be not the least of the many factors in fashioning uniform principles in state and national governments. Important as are these generalized tendencies, the writer nevertheless craves indulgence if he neglects these in detail, in order to devote special attention to what after all seems the most notable trend of late years in our states, *viz.*, the sudden leap into prominence of the electorate.

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[1] Dealey, Our State Constitutions; Dodd, Revision and Amendment of State Constitutions.

[2] For list and work of these, see Report of the Library of Congress, 1911, pp. 183–237.

The electorate as a governmental agency has seldom been made a topic for political theorizing. We all easily admit that the voting population in a way voices the wish of the people, who under social contract theories are sovereign. Yet the social contract theory has already been decently interred and in present discussions we speak less of the sovereign people and more of the sovereignty of the state, which presumably is to secure to the people their rights and liberties. In Locke's Essay on Government,[3] liberty is to be maintained by reserving to the sovereign people the right of revolution against a government, should it perchance usurp its delegated powers. Montesquieu[4] would secure popular liberty by vesting governmental powers in three separate departments, each with its own special power, each checking and balancing the others, and all unified by the necessity of a common policy. Rousseau[5] on the other hand taught that popular liberty could only be secured by centralizing and retaining sovereignty in the whole people, and making the government a mere administrative agent under the authority of its sovereign master. We have translated Locke's right of revolution into periodic elections, at which we overturn or maintain governments at will; we have separated the three departments of government, balancing one against the other after the most approved fashion; and now the states, still unsatisfied, are placing in their constitutions a revised version of Rousseauism. For the trend of changes now under way plainly emphasizes the thought that sovereign powers should be centered in the people, as voiced by the electorate, with a plain intimation that the three historic departments of government should increasingly become administrative and ministerial in their functions.

This trend may best be shown by calling attention somewhat briefly to the rise of the electorate into its modern position of political importance. In the days of Locke and Montesquieu, although much was said about the People, so humble a body as the electorate barely entered into discussion, nor were its powers in fact of any real imporance. Its broad democratic basis in manhood suffrage had had only a faint mention in Cromwellian times[6] and needed the stimulus of the revolutions of the Americas and of France to make it at all effective. But now, one hundred and thirty-five years after the Declaration of Independence, the electorates of our states with few exceptions dominate their governments. They elect practically all officials of any consequence, and by civil service rules are securing equality of opportunity for every citizen who wishes to aspire to the subordinate positions in the civil service. Furthermore the electorate through the constitutional convention and its referendum, and in some states through the initiative and the referendum in amendments, has secured control of the power of formulating fundamental law. It also is rapidly developing a direct power over statutory legislation through the same devices, so that hereafter the enacting clause of legislation is apparently to change from the old formula, "Be it enacted by the legislative assembly," to "Be it enacted by the people of the state."[7] In addition to these great tendencies there must be added the demand for a thorough popular control over nominations and elections, and a growing demand for the Recall, best known in its connection with the commission form of municipal government, but now prominent in the larger field through its adoption in the great state of California, and the discussion over the recall provision of the Constitution of Arizona. This new reform is in California applied to "every elective public officer of the State,"[8] executive, administrative, legislative, and judicial, and thus completes the logical sequence of popular supremacy. These several movements are well known in general to this audience and it is unnecessary at this time to enumerate their details.

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[3] Second Treatise, Chapter XIX.

[4] Spirit of Laws, Book XI.

[5] Social Contract, Book III.

This growth in the powers of the electorate has characterized the entire constitutional history of our states, but has become especially noteworthy since 1898, when South Dakota amended its constitution so as to provide for the optional initiative and referendum in statutory legislation. This beginning, though abortively seconded by Utah in 1900, did not really gain headway until 1902 when Oregon through its amendments gave an impetus to the movement, at the same time broadening it by the inclusion of the initiative for constitutional amendments. In one form or another twelve states[9] have adopted these "modern improvements," and at least seven others have arranged to submit the question to their electorates for final decision. Of these states eight have also either adopted the recall or plan to submit the proposition for approval or rejection.[10]

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[6] In the Agreement of the People, for instance.

[7] As in the Constitutions of Oregon and Oklahoma, for instance.

[8] California amendment, 1911.

The upshot of this trend within our states is that hereafter our political theorists must no longer rest satisfied with the discussion of the three historic departments of government, but must consider along with these, the fourth department of government, the electorate, which now controls the state constitution, defines therein its own organization and powers, and asserts for itself its right to elect at stated intervals all executive and administrative officers and to recall them at will; which elects the judges of the state, sits by their side as jurors in the settlement of cases, and threatens to recall them also when they prove "unreasonable" in their decisions. Through the initiative and referendum it dictates statutory legislation, recalls unsatisfactory legislators and vetoes the unpopular acts of its agent, the assembly, not with the suspensive veto of a governor, but with the absolute veto of a sovereign. Just as in England Parliament has virtually absorbed into its lower House the former haughty powers of king and nobility, so in the states the electorate is absorbing from the departments their powers, checking them when necessary, and balancing itself against them unitedly, like Homeric Zeus, when he compared his power to the combined powers of the assembled gods and terrified them into submission by threats of banishment to Tartarus.[11]

This discussion would not be complete unless supplemented by a study of the electorate itself, as the representative body through which the people works its sovereign will. In the first two-thirds of the nineteenth century democracy in the United States took the form of a demand for manhood suffrage, and this was finally achieved by the admission to the suffrage of the enfranchised slaves of the South. In logical order came the demand for women's suffrage, and this movement has already won within the last twenty-five years six states, which unitedly contain over five millions of population.[12] Many look with dismay at the prospect of having a voting list made up of all adult citizens over twenty-one years of age, and hesitate to favor such an extension of the suffrage, lest the troubles of our overburdened democracy be accentuated rather than diminished. Yet we must realize that if women enter definitely into economic, civic and educational activities, this in the long run inevitably spells suffrage on equal terms with men. But a compound of women's suffrage, initiative, referendum and the recall, such as that California now enjoys, might well cause to waver even the logical mind of a Rousseau or a Jefferson as he would contemplate the possibility of successfully guiding political policies through such stormy seas. One may express the hope that the rising tide of direct democracy may have its ebb as well as its flow, yet when it does move forward, no opposition is strong enough to resist its onward movement. But representative democracy has its advantages, and it is possible that if statesmen would seriously undertake the reform of the legislature, and legislative law and procedure, and also seek to redeem administration from its slough of despond, much might be done to stem the tide of direct democracy. This topic, however, comes up for discussion on tomorrow's program and needs no consideration now.

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[9] If Arizona and New Mexico be included.

[10] Adopted; Oregon, California, Arizona.

[11] Iliad, book VIII.

[12] Wyoming, 1889, Colorado, 1893, Utah, 1895, Idaho, 1896, Washington, 1910, California, 1911.

On the other hand it is not necessary to assume that an unrestricted adult suffrage is inevitable. There are tendencies in our constitutions, little noticed, that in later years may profoundly affect the whole situation by modifying considerably the character of the electorate. The natural rights theory of suffrage would assume that every male on attaining his majority should automatically become a voter. Such a system may have its utility in a simple civilization, but not in a complex one. In fact many of our states have gone far in the direction of denying it by placing numerous restrictions on the exercise of the suffrage. These restrictions in brief may be classified under four headings, and are well worth attention. (1) The privilege of voting is forbidden to the criminal, the pauper, and the mentally incompetent. If, for example, the stern provisions contained in the constitutions of Alabama[13] and Virginia[14] were common to all states and enforced, a dangerous and purchasable part of our voting population would be eliminated. (2) There are fifteen states that demand a slight educational qualification, though three of these[15] allow the possession of taxable property as an alternative. A disqualification for illiteracy is of course especially felt in states having a large colored or foreign born population. Again, the use of the Australian ballot is itself a kind of educational qualification. In its blanket form its large size, expecially in cities, is such that persons of ordinary intelligence cannot without previous study feel sure of the precise method of marking it. The process is simplified if the circle is used under party emblems, but if on the other hand the names of candidates are arranged alphabetically under each office and supervisors are by law forbidden to assist a voter in marking his sheet, a really large per cent. of voters would be unable to fill out the complete ballot. In other words the blanket ballot may disfranchise many careless or unintelligent voters, whether they live in a slum or in our best residential sections. (3) Practically all of our states require their voters to register and to vote in person but this requirement reduces the voting list by from twenty to forty per cent., varying with local conditions and the interests at stake in the election. If registration must be completed several months before election instead of within a thirty or ten day period, the number who fail to register is still larger. On the other hand states may favor a desirable class of voters by not requiring them to register for each election, virtually making them life members if other conditions are complied with. The "grandfather," "old soldier," and "old citizen" clauses of the South, or the exemption of rural voters from registration, illustrate this. (4) In some states the payment of a poll tax is a prerequisite for voting and may even have to be paid six or nine months before election. Simple though the requirement is, human nature is such that many refuse or neglect to pay the tax, and thus disfranchise themselves. This is especially the case if the payment of another's tax is made bribery, and if it is known that the state will make no attempt to collect the tax except at the time of registration. A similar result is attained by demanding prepayment of property taxes before registration. In Rhode Island, for example, only those assessed on property, real or personal, are allowed to vote for members of city councils, and personal property voters must pay in advance. The amount of property required is small, only one hundred and thirty-four dollars, but in the city of Providence the vote for members of the board of aldermen, over a period of ten years, averaged only forty per cent. of that cast for the mayor, who is voted for on the basis of manhood suffrage. In other words an apparently slight requirement reduces the vote by sixty per cent.

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[13] Sections 177–188. [14] Section 23. [15] South Carolina, Louisiana, Alabama.

What is the effect of these several restrictions in respect to the relative proportion of voters to population? In round numbers adults over twenty-one years of age should number about fifty-five or sixty per cent. of the population. If the presidential vote for 1908 be taken by states and the ratio of that vote be compared with the population according to the census of 1910, a rough approximation to the extent of restriction may be had. Making this comparison it will be found that the vote of the four women-suffrage states was about thirty per cent. of their population; twenty-five states with comparatively slight restrictions, out of their population of over sixty millions show a vote of twenty per cent.; the six New England states, using greater restrictions, cast a vote of fifteen and two-thirds per cent. out of their population of six and one-half millions; eleven of the Southern states have stringent regulations and reduce the vote of over twenty-two millions of people to a bare seven per cent., and of these the four[16] having the most stringent requirements vote out of their population of over seven millions only four and four-tenths per cent. The writer places no special emphasis on these per cents since there are many "extenuating circumstances," such as single party states and the direct primary. Yet the per cents call attention to a difference worthy of closer study in each state.

Without raising the question as to the wisdom or unwisdom of placing restrictions on the exercise of the suffrage, this point becomes evident. If a state desired to grant the suffrage to all adult citizens, irrespective of sex, who were intelligently interested in government, it might strike the word *male* from its constitution, make a judicious selection of restrictions as attested by the experiences of sister states and yet feel sure that its total vote would not exceed twenty or twenty-five per cent. of its population, since the indifferent, the careless, and the incompetent would disfranchise themselves. If the eleven Southern states, for example, should strike out the word male from their constitutions, the increase in their voting would be chiefly in the vote of whites, and yet the total would at the most hardly exceed fifteen per cent. of the population. Suffrage under such restrictions may be considered democratic, since every adult citizen male or female would have the opportunity to acquire the right to vote and only these would forfeit it who lacked energy or interest. It is probable that for many years relatively few women would wish the ballot, but those that did, and met the necessary qualifications, would have the privilege. If by such devices intelligent women interested in civic life could be added to the electorate, and indifferent or inefficient men be dropped from it, democracy might benefit from the change. It may be true also that movements toward direct democracy would be at once safer and saner if the actual vote at an election through suitable restrictions were cast by the wiser half of our citizen body.

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[16] Mississippi, South Carolina, Louisiana, Alabama.

THE CITY AND COUNTY IN MASSACHUSETTS

BY O. C. HORMELL

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Massachusetts is a pioneer in municipal reform. She has given and is giving most careful attention to the problems of city government. But the same degree of attention and wise consideration have not been extended to the county. Outside of New England the numerous powers exercised by the county have often given rise to evils, but in Massachusetts the problem grows out of the insignificance of the county. There the county is the *neglected* organ of government. Reforms which are considered fundamental for good city government have not been adopted for the county. For example: the civil service laws which so efficiently regulate the appointments to city positions do not apply to the county, and furthermore, for some inscrutable reason, the county entirely escapes the legal tax limit imposed on the city.

The county problem in municipal affairs in Massachusetts presents three aspects:—I. The county problem in relation to the cities in general. II. The relation of the city of Boston to Suffolk county. III. The relation of the county to the problem of a metropolitan union.

The county[1] in Massachusetts is a quasi corporation created by the state legislature[2] mainly for judicial purposes. County boundaries are arranged and county government is organized with the view to facilitating the administration of justice by the commonwealth rather than with intention of creating a unit of local government.[3]

As an organization for the administration of justice, the county is merely a judicial district of the state. The administration of justice is vested partly in the supreme judicial court, and partly in the superior court, the judges of which hold sessions in the several counties; partly in a probate court in each county; and partly in district and police courts,[4] for which purposes the counties and cities are districted.

[1] There are fourteen counties in Massachusetts.

[2] There are no constitutional restrictions on the control of the legislature over the county.

[3] Compilation of laws relating to counties and county commissioners prepared under the direction of the Middlesex county commissioners May, 1911, p. 7.

[4] In Boston they are termed "Municipal Courts"; for example, "Municipal Court, Roxbury District," etc.

The judges and justices of these courts are appointed by the governor and paid by the commonwealth, with the exception of the justices of the district and police courts, who are paid by the county. Since the administration of justice is primarily a state function, the question of a conflict of jurisdiction between the city and county does not arise in that connection.

The problem of the conflict of jurisdiction and the duplication of functions between the city and the county in Massachusetts, so far as it exists, arises out of the exercise by the county of certain functions of local government. County administration in its relation to municipal affairs in Massachusetts does not present those insistent problems which frequently exist in states outside of New England where the county is a more important local administrative unit. In Massachusetts the city and the town are the all important units of local government. The relatively unimportant position of the county is largely responsible for a deplorable lack of interest as well as lack of information concerning those functions actually exercised by the county government. An active interest in county affairs appears to be lacking, not only among the mass of voters, but even among the more public spirited members of the community.[5]

The county administration is exercised, chiefly, by a group of officials elected at large by the voters of the county. The group comprises three county commissioners, sheriff, treasurer, register of deeds, register of probate, district attorney, and clerk of the courts. The last three named, however, are primarily judicial rather than administrative officers.

The chief local administrative functions of the county are vested in the board of county commissioners.[6] The county commissioners affect the interests of the city through the exercise of both financial and quasi judicial functions. As the financial agents of the county, the commissioners draw up the annual budget, levy and apportion taxes for county purposes, and supervise the expenditure of county funds.[7] Sitting as a court the commissioners may hear and determine petitions for abatement of taxes,[8] sewer assessments and the like.[9] Their jurisdiction, except where special acts or city charters provide otherwise, also extends to the city in certain matters relating to highways and railroads, particularly in questions arising from the crossing of a highway by a railroad.[10] They may likewise hear and determine appeals from the board of health in a city in case of the refusal of the board to abate a nuisance.[11]

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[5] The lack of interest is illustrated by the following typical answer to questions concerning county administration submitted by the writer to prominent men in Massachusetts: "The problem of county administration amounts to so little that we really hardly take any account of it."

[6] One commissioner is elected each year for a term of three years.

[7] Revised Laws, chap. 21, sec's. 25–34.

That part of the system of county government in Massachusetts most subject to criticism is the irresponsible position of the county commissioners. The comparatively few[12] administrative functions vested in them are exercised without due publicity or adequate supervision. The official acts of these officers escape, almost entirely, the scrutiny of the public. The average voter naturally limits his interest in local government to the city or town, which is the authority responsible for taxes, while probably not one citizen in five hundred comes into direct contact with the county commissioners.[13] Thus, although popularly elected, they are too far removed from the people to be held sufficiently responsible.

Under such favorable circumstances strongly entrenched party organizations known as "county rings" have developed, whose objects appear to be the perpetuation of their members in office and the distribution of appointive positions for party or personal advantage. The ends of the "ring" are furthered by the lack of publicity and proper accountability surrounding the position of the county commissioners, and especially by the lack of any civil service laws such as regulate the appointments to office in the cities of Massachusetts. These conditions, it is alleged, result at times in the election of incompetent officials and tend to put in office men who have passed their day of usefulness.

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[8] Appeals from city or town assessors, Revised Laws, chap. 12, sec. 77; chap. 14, sec. 39, Acts. 1909, chap. 490, pt. III., sec. 76.

[9] Appeals from mayor or aldermen, or sewer commissioners. Revised Laws, chap. 49, sec. 7; chap. 50, sec. 12.

[10] County commissioners may, with the consent of the state railroad commissioners, authorize the laying out of a railroad across a public way. Acts, 1906, chap. 463, pt. II., sec. 111.

They may issue a decree permitting the railroad corporation to raise or lower a highway. Acts, 1906, chap. 463, pt. II., sec. 109.

They may authorize the alteration of the course of a highway to prevent a railroad crossing it, or for the "purpose of facilitating the crossing thereof." Acts, 1906, chap. 463, pt. II., sec. 110.

They "have original jurisdiction of questions relative to obstructions to highways . . . caused by the construction or operation of railroads." Acts, 1906, chap. 463, pt. II., sec. 117.

They may hear petitions of the aggrieved concerning the location of a railroad and may order a change of location. Acts, 1906, chap. 463, pt. II., sec. 92.

[11] Revised Laws, chap. 75, sec. 84.

[12] Few in comparison with those exercised by county commissioners in many other states.

[13] An opinion expressed to the writer by a Boston attorney and state representative of wide experience.

Another common ground of complaint is the inadequate supervision of expenditures made by the county commissioners. Such legal supervision as existed prior to 1895 was exercised by the legislature through the committee on county estimates. This committee, which was considered the most unimportant in the house, is said to have perfunctorily accepted the unitemized estimates of the county commissioners, which the legislature just as perfunctorily approved. During the sessions of 1895 and 1896, however, a series of statutes were enacted which had for their object the creation of adequate checks on county expenditures. In pursuance of those acts itemized estimates of expenditures are submitted by the county commissioners to the controller of county accounts, who analyzes and classifies the items and reports them to the legislature. Copies of the report are also sent to the mayors of the cities and the selectmen of the towns in the commonwealth.[14] The legislature takes final action on the report only after receiving the recommendations of a joint committee of the house and senate on counties, which meanwhile has given a series of public hearings.

This legislation has without doubt improved the situation, but it is claimed that the desired end is not even yet entirely attained. Although it is probable that the efficient administration of the existing law would provide an effective check upon county expenditures, the indifference to county affairs on the part of the public is said to have resulted in lax enforcement. Because of the apparent lack of public interest no effective, continuous pressure is brought to bear on the legislature sufficient to cause it to scrutinize carefully the county budget. A representative of long experience stated to the writer that, notwithstanding the admirable laws, the oversight of county finances by the legislature is still to a deplorable extent a perfunctory procedure.

The office of the sheriff likewise meets with no little criticism.

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[14] Revised Laws, chap. 21, sec. 27.

The sheriff acts not only as a court official but is also partly responsible for the administration of jails and houses of correction, the keepers and masters of which are appointed by him. Students of the prisons problem and persons interested in social reform claim that grave evils arise from the present county administration of prisons and houses of correction which, they assert, is not only inefficient but often vicious. The Massachusetts prison association considers the administration of jails by the county a "most curious governmental remnant of a past age."[15] The Massachusetts civic league believes the jails of Massachusetts are among "our most successful schools of crime."[16]

Of the register of deeds and the register of probate little criticism is heard. Their official duties bring them into daily touch with the public. Hence their efficiency as public officials may be tested by the individual voter to a degree not possible in the case of the county commissioners or the sheriff.

Those interested in the situation are by no means agreed concerning the nature of remedial measures required, or the amount desired. Certain men of wide experience argue that the chief administrative functions now exercised by the county government could be exercised more advantageously by the state, while the judicial functions exercised by the county commissioners could well be transferred to the superior court. Indeed some would go so far as to abolish county government completely, retain county lines merely for judicial and registry districts, transfer the administrative functions to state commissions and vest in the governor, who now appoints the judges, the power to appoint the remaining county officers. Others, however, believe that the changes proposed above would be detrimental. Government by state commissions, they assert, is a violation of the time-honored principles of local self-government, while the courts, they argue, are already too crowded and their procedure too formal to efficiently dispose of the cases now adjudicated by the county commissioners.

Although there is a somewhat undefined feeling on the part of the public that the county government is not all that it should be, while it is not uncommon to find that city officials[17] ill-disposed toward the county government, and while a few public-spirited citizens advocate reform yet the apparent general lack of interest in the matter makes it doubtful whether any essential change in the relations of the city to the county may be expected in the near future.

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[15] Massachusetts Prison Association, No. 36.

[16] Massachusetts Civic League, Report 1911, p. 10.

[17] Especially in case the "city hall" is of opposite political faith to the "county ring."

Boston has gone a long way toward eliminating the county problem in her municipal affairs. The relation of the city of Boston to the county of Suffolk is unique among the cities of Massachusetts. It is Boston's good fortune to exercise practically all the functions vested in both city and county governments in Massachusetts. This favorable situation was inaugurated by the acts of the Massachusetts legislature in 1821-22 which transformed the town of Boston into a city.[18] The town of Boston had suffered from a conflict of jurisdiction between the town authorities and the county court of sessions concerning such matters as taxation and highways. The evil was eliminated at the creation of the city by the abolition of the court of sessions for Suffolk county and by transferring its administrative functions to the mayor and aldermen of Boston.[19] These county functions were chiefly those which were later vested in the county commissioners in counties other than Suffolk.

Suffolk county is composed of the cities of Boston and Chelsea, and the towns of Revere and Winthrop. The relations of these municipalities to one another and to the county of Suffolk is largely the result of the conditions existing at the time when Boston became a city.[20] Chelsea, Revere and Winthrop are considered a part of Suffolk county for the purpose of the administration of justice and the election of officers to those county offices which exist in Suffolk county.[21] For purposes relating to the jurisdiction of the county commissioners, however, Revere and Winthrop are under the authority of the commissioners of Middlesex county, and the electors of those towns vote for commissioners of that county, while in Chelsea the aldermen of that city exercise in most cases the functions of county commissioners.[22] Chelsea, Revere and Winthrop have no share in the ownership of the property of Suffolk county. The ownership of, and the jurisdiction over, all county property, both real and personal are vested exclusively in the city of Boston. At the same time those municipalities are freed from taxation for county purposes, since the entire county expenses are by law charged to the city of Boston. For judicial purposes, Suffolk county has the organization common to all Massachusetts counties with the important exception that the city of Boston bears all the expenses[23] of the judicial administration of the entire county.

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[18] Acts, 1821, chaps. 109-110.

[19] Acts, 1821, chap. 109.

[20] Revere and Winthrop were then a part of Chelsea.

[21] District attorney, clerks of the courts, sheriff, register of probate, register of deeds.

[22] Revised Laws, chap. 20, sec. 34.

Prior to the adoption of the city charter of 1909 the aldermen of the city of Boston exercised the chief functions of the county commissioners for Suffolk county.[24] By the charter of 1909 these functions[25] were vested in the city council and to a certain extent in the mayor. The treasurer[26] and auditor of accounts of the city of Boston act as treasurer and auditor for Suffolk county. There remain, however, seven county offices[27] filled by popular election and a number of county positions filled by appointment[28] made either by the governor of the state or by the justice of the superior court.[29]

Although the relation of Boston to Suffolk county prevents the duplication of functions and conflicts of jurisdiction, and in the main frees Boston from those annoying problems growing out of the relation of the city to the county which confront so many of our large cities, nevertheless there remain in the Boston situation certain problems which demand attention.

In the first place, the position of Chelsea, Revere and Winthrop in Suffolk county is illogical and in a degree unfair to Boston. For judicial purposes they are a part of Suffolk county; they receive the benefit but do not share the expenses of the administration of justice in the county. Boston not only pays the expenses of the supreme and superior courts in the county which are open freely to the other municipalities in Suffolk county, but she also bears the greater share of the expenses of the Chelsea police court.[30] Boston suffers further injustice from a general law for all counties which provides that "fines in police or district courts go to the city or town in which the offence is committed." The result of this law is that Revere and Winthrop,[31] which contribute nothing to the maintenance of the courts, make a clear profit from the fines thus received.[32] An act of the legislature in 1911, however, has for its object the elimination of this difficulty. It provides that upon application by any of the municipalities in Suffolk county the supreme judicial court shall appoint a commission to investigate and report its decision concerning the adjustment and apportionment of the county expenses among the several municipalities; and that the decree of the "court confirming the decision shall be final and binding."[33] The commission has not yet been appointed. A petition to that end has been filed by the city of Boston. But meanwhile the city of Chelsea and the town of Winthrop have pleaded the unconstitutionality of the act, and the question is scheduled for a hearing in the near future, before the supreme judicial court. It seems improbable, however, that an equitable apportionment of the county expenditures among the several municipalities of Suffolk county can be permanently delayed.

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[23] "These include the care and maintenance of the Court House . . . the buildings occupied by the Municipal and Districts Courts in Boston, and in part the police court in Chelsea; the salaries of the Judges of the Juvenile Court, the District Courts of Boston and the Police Courts of Chelsea; the salaries of clerks, court officers . . . and all other employees of all courts . . . (and) the fees of jurors and government witnesses . . ." Boston Finance Commission Report I. (1908) 389–390.

[24] Revised Laws, chap. 20, sec. 34.

[25] Acts, 1909, chap. 486, sec. 3. The bicameral city council was abolished and a single council of nine members elected on a general ticket was substituted.

[26] Revised Laws, chap. 21, sec. 5.

[27] Register of probate, register of deeds, district attorney, sheriff, clerk of the supreme judicial court, two clerks of the superior court "one for criminal and one for civil business." Acts 1907, chap. 566, sec. 346.

[28] Important among these are the medical examiners and the index commissioners.

[29] In 1910 there was a total of 596 paid county officials and employers while for the city there was a total of 13,068.

A second difficulty is the unsatisfactory system of county finances, as the Boston finance commission pointed out[34] in 1908. There was no legal limit upon taxation for county purposes; "no effective check on the increase of salaries and the creation of new places"; and a crude "system of estimates and appropriations" existed. Such a system resulted in an increase in county expenditures of about 97 per cent. within the fifteen years prior to 1908, in contrast to an increase of about 32 per cent. in the population, and 51 per cent. in the valuation.[35] The charter of 1909, however, has remedied this difficulty to a certain extent. Although there is still no legal limit on county taxation, and "new places" in county departments may probably still be created too easily since the county appointees are not subject to the civil service laws, the system of appropriations and expenditures under the new charter furnishes a much more effective check on unnecessary county expenditures than was possible under the previous conditions. The heads of county departments are obliged to submit annually to the mayor itemized estimates of the expenditures of their departments.[36] Such estimates are examined by the mayor[37] and, so far as he sees fit, are incorporated in the annual budget which is then submitted to the city council for its approval. The council may omit or reduce, but may not increase any item. The permanent finance commission furnishes another valuable check on expenditures. It is its duty to investigate and report on "all matters relating to appropriations . . . expenditures, and methods of administration affecting the city of Boston or the county of Suffolk."[38]

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[30] Boston Finance Commission Report, I. (1908), 432. During the year 1910–1911 Boston paid on the account of Chelsea Police Court the sum of $12,684.47: Report of the Auditor of the City of Boston 1910–1911, p. 174.

[31] Revere is under the jurisdiction of the Chelsea Police Court, while Winthrop is under that of the East Boston District Court.

[32] Boston Finance Commission Reports, I. (1908), 434.

[33] Acts, 1911, chap. 482.

[34] Boston Finance Commission Reports, I. (1908), 392–403.

Another weak spot, it is alleged, appears in the election of certain officials. Many believe that a distinct step in advance would be taken by making appointive, subject to civil service laws, the seven county offices now filled by popular election. Since their functions are either judicial or administrative rather than "policy making" it is argued that such a change would not only be in harmony with the principle of the "short ballot" but, by eliminating a number of elective offices hitherto filled by party organizations, would also further aid the city of Boston in freeing herself from the influence, in city affairs, of permanent party organizations.

The relation of both the city and the county to the problem of a united metropolitan Boston is a question of far greater interest to the citizens of the metropolitan district than are any questions growing out of the relation of the city to the county alone.

Metropolitan or "Real Boston" in contradistinction to municipal Boston comprises the area included in the metroplitan park, water and sewer districts. It has a population of a million and a half while that of municipal Boston numbers only a few more than six hundred and seventy thousand. The population of metropolitan Boston is bound together by a community of interests, both economic and social. Boston is the commercial and industrial center of the whole metropolitan area, and the interests of those living in the suburban municipalities are, in the main, identical with the interests of the residents of municipal Boston. Yet within the metropolitan district there exists for purposes of government thirty-nine different municipalities, portions of five counties,[39] the metropolitan park commission, and the metropolitan water and sewer board, each independent of the others, and over all no official body having jurisdiction except the state legislature. And that body acts only "through the medium of artificially created districts directed by boards with narrowly restricted administrative powers and no legislative or creative functions whatever." Moreover the legislature "is crowded with state business," while "three fifths of its members live outside of 'Real Boston' and are therefore not . . . familiar with its needs."[40] Under such conditions conflict of jurisdiction has been inevitable,[41] and pressing problems such as housing, transportation and industrial education have not been effectively met.

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[35] Boston Finance Commission Reports, I. (1908), 393.

[36] Acts, 1909, chap. 271, sec. I.

[37] "All appropriations . . . to be met from taxes . . . originate with the mayor." Acts, 1909, chap. 486, sec. 3.

[38] Reports are to be made "to the mayor, the city council, the governor or the general court." Acts, 1909, chap. 486, sec. 18.

Fifteen years ago a metropolitan commission appointed by the state legislature to investigate "The subject of a general municipal administration for the city of Boston and the adjoining municipalities," submitted to the legislature a plan for bringing all the municipalities within the metropolitan district into "the boundaries of a single county." Such a county should "have larger legislative and administrative powers[42] than counties in . . . [the] state . . . . [had] hitherto possessed."[43] It was further proposed to eliminate the existing county boundaries and county governments within the district and vest their functions in the newly created county government, which was also to assume the functions exercised by the existing metropolitan boards. The commission suggested that such a county should be governed by a "County Council" in which the cities and towns of the Metropolitan district should have "reasonable representation."[44] The cities and towns were to retain their autonomy and their jurisdiction in all matters of local government.

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[39] Suffolk County, containing four municipalities.
Middlesex County, containing seventeen municipalities.
Essex County, containing four municipalities.
Norfolk County, containing twelve municipalities.
Plymouth County, containing two municipalities.

[40] Pamphlet "Real Boston" issued by Boston Chamber of Commerce, Dec. 1910, p. 4.

[41] Conference for Good City Government 1910, p. 549.

[42] Report of the Metropolitan District Commission, 1896, p. 3.

[43] Ibid, p. 6.

It is interesting to observe that as early as 1896 a proposal was made to solve the problem of metropolitan union by creating a county conterminous with the metropolitan district. Such plans failed of adoption partly because the state was unwilling to give up its experiments with metropolitan boards; partly because the county interests were hostile; but especially because the several municipalities feared that their local autonomy would be encroached upon.

Since 1896 the need of some form of governmental co-operation within the metropolitan district has not been lost from sight. To "federate" the cities and towns of the metropolitan district is one of the prominent purposes of the Boston-1915 movement. The agitation for the federation of metropolitan Boston is headed by the "Real Boston" committee[45] of the Boston chamber of commerce. Since the committee fully recognizes the spirit of opposition to annexation and consolidation, at present it goes no further than to recommend "a loose confederation"; that is the creation of a co-operative body composed of the representatives[46] of the thirty-nine cities and towns within the metropolitan district. Such a metropolitan council would have "advisory power only."[47] It contemplates a kind of official conference of the executives of the various municipalities which would concern itself only with intermunicipal functions. Each municipality would remain absolutely independent.

The plans of the "Real Boston" committee as well as the proposals of the "metropolitan plan commission"[48] do not at present contemplate the changing of county lines, the interfering with county government as it is now constituted, or in any way changing the relation of the county to the metropolitan district. The present division of the administration of justice in the metropolitan district among the five separate shire towns likewise would not be interfered with. In fact great opposition probably would be raised to separating the shire towns (*i. e.* Dedham of Norfolk and Cambridge of Middlesex), from their counties, on account of the location there of the archives, title registries and county buildings.

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[44] Ibid, p. 41.

[45] March G. Bennett of Boston is the chairman.

[46] "The mayors of all the cities and the chairmen of the boards of selectmen of all the towns."

[47] Pamphlet of "Real Boston" published by the Boston Chamber of Commerce, March 1911.

[48] Created by the Legislature, 1911.

Probably it would not be wise in consideration of the present state of public opinion to attempt a more radical change, than that proposed by the Boston chamber of commerce in the relation of the several governmental organizations within the metropolitan district. However it is difficult to believe that in the metropolitan district a system of county government can permanently remain, in which the antiquated county boundary lines are adapted to the conditions of 1793[49] rather than to those of to-day; in which the important county officers are not held responsible by those who elect them; and in which an undue share of the court expenses are borne by the city of Boston.[50]

It does not seem at all improbable when the commercial, industrial and social interests of metropolitan Boston have brought about the federation of that district for the purposes of government that the federation will from time to time have assigned to it additional matters relating to metropolitan administration and that county administration and county boundaries will in time conform to the needs of the metropolitan district.

ORREN CHALMER HORMELL,

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[49] When the last general revision was made.

[50] This results from the fact that an increasingly large part of the court cases of Essex, Norfolk, and Middlesex counties are tried in the Suffolk county, since it better suits the convenience of many litigants and especially the attorneys whose offices are located in Boston.

THE RELATION OF COUNTY TO CITY GOVERNMENT IN NEW YORK[1]

BY ARTHUR LUDINGTON

New York City

The problem created by the overlapping of county and city governments is not as acute in New York City as in many of the large cities of this country for the reason that—except in so far as the administration of justice is concerned, and except for the fact that certain separate county officers are expressly provided for by the constitution for purposes more or less directly connected with the administration of justice—the governments of the four counties within New York City have been almost wholly consolidated with, and merged in, that of the city.

In order that the provisions by which this result has been accomplished may be more clearly understood and the present position of the four counties more intelligently presented, it will be worth while to trace briefly the history of these counties, prior to the creation of the present city in 1896, and their relation to the cities which previously existed within the limits of Greater New York.

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[1] The principal sources of information as to the governments of the four metropolitan counties, and as to their relation with the government of New York city are (1) the Greater New York Charter of 1897 (L. 1897, Ch. 378, as amended by L. 1901, Ch. 466; Ash's 1906 edition, with annual supplements) and the supplementary act as to boards of supervisors (L. 1897, Ch. 380); (2) the so-called "Consolidation Act" of 1882—a consolidation of all the previous laws relating to the city and county of New York (L. 1882, Ch. 410; Ash's edition); and (3) numerous other acts of the legislature, many of them special acts (the most important of these are referred to in the footnotes below). In tracing these various acts of the legislature relating to New York City, and to New York, Kings, Queens and Richmond counties, Baxter's "General Index to the Laws of the State of New York, 1777–1901," with a supplement covering the years 1902 to 1907 inclusive, and Silvernail's "Index to the Session Laws of the State of New York, 1775–1897" may conveniently be referred to. For the earlier history of New York City and county the following compilations are also useful: "Laws Relating to the City and County of New York," by Murray Hoffman, 3 vols., N. Y., 1865–9; "Laws of the State of New York relating particularly to the City of New York," by David T. Valentine, N. Y. 1862; "A Compilation of the Laws of the State of New York relating particularly to the City of New York," by Henry E. Davies, New York, 1885. "Leslie's History of Greater New York," by Daniel Van Pelt, 3 vols., N. Y., 1898, also contains some material on this general subject.

First, then, let us see what were the boundaries at various periods of the four metropolitan counties and of the earlier cities of New York, Brooklyn and Long Island City. The earliest of these political divisions to receive corporate existence were the counties—New York, Kings, Queens and Richmond—all of which were among the ten original counties created by the first colonial legislature in 1683.[2] The boundaries of New York county were the same as those of the original New York City—which at that time, however, had not yet received any charter—and comprised only Manhattan Island, a number of smaller neighboring islands and several of the ferries to Long Island. The first charter of New York City, the so-called Dongan charter granted in 1686, made no mention of New York county, created three years before, but gave the city the same boundaries as this county. Thereafter—for example in the Montgomerie charter of 1730—the two were generally referred to together under the title of "The City and County of New York." Their boundaries also continued to be identical. Except for a few minor changes in these boundary lines, the limits of the city and county remained unaltered from 1686 until 1873, when the towns of Morrisania, West Farms and Kingsbridge were taken from the county of Westchester[3] and made a part of the city and county of New York. In 1895, after the question of the formation of the present Greater New York had been submitted to the voters of the various counties, cities, villages and towns affected, but before the actual consolidation, parts of certain other towns and villages of Westchester county, all but one of which had voted in favor of the proposed consolidation, were joined to and merged with the original city and county of New York.[4]

The second of the four counties established in 1683—Kings county—comprised the whole southwestern corner of Long Island. Brooklyn —or Breuckelen, as it was then called—was only one of the towns within this county. It was not until 1834 that it became incorporated as a city.[5] In 1851 Williamsburgh, in the adjoining town of Bushwick, was also incorporated as a city,[6] and in 1854 both Williamsburgh and the town of Bushwick were consolidated with the city of

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[2] Cf. also L. 1788, Chs. 63 and 64.

[3] L.1873, Ch. 613.

[4] L. 1895, Ch. 934.

[5] L. 1834, Ch. 92.

[6] L. 1851, Ch. 91.

Brooklyn.[7] In 1894 the remaining towns of Kings county—Flatbush[8], New Utrecht,[9] Gravesend,[10] and Flatlands[11] —were also consolidated with Brooklyn, and the city thus became territorially identical with Kings county.

By 1895, therefore, the limits of the two chief cities which afterwards became part of Greater New York were identical with those of New York and Kings counties respectively, and the limits of the two counties were the same as at present.

The third of the counties created in 1683—the county of Queens—comprised originally the whole northwestern corner of Long Island. It contained no cities until 1870, when Long Island City in the town of Newtown was incorporated.[12] In 1894 the whole western end of the county, including the towns of Newtown, Flushing and Jamaica, and part of the town of Hempstead, was asked to vote on the question of consolidation with New York City to form the present Greater New York,[13] and voted in favor of this proposal. The consolidation took place two years later.[14] At the end of another two years [15] all that part of the original Queens county which had *not* been made a part of New York City was separated from the portion which had, and was established as a new county—the county of Nassau. Queens county as it now exists, therefore, is wholly included within New York City.

The fourth county created in 1683—the county of Richmond—comprises to-day as it did originally only Staten Island. It has never contained any cities. Like Queens county, it became a part of Greater New York in 1896.

So much for the earlier boundaries of the various counties and cities comprised within Greater New York. Let us now consider briefly their governmental arrangements prior to the charter of 1897.

As we have seen, the city and county of New York were territorially identical from earliest times, and remained so after the annexations of territory in 1873 and 1895, and up to the formation of the present city in 1896. It may have been partly owing to this fact that during the colonial period—and indeed up to 1857—the political existences of the county and the city were closely, not to say, inextricably, bound up with each other. The county received its organization and powers under the general laws of the colony and the state, and under various special acts passed from time to time; the city, under its successive charters—supplemented also during the nineteenth century by special acts of the legislature, at first infrequent but gradually increasing in number. The powers and duties conferred upon the two bodies, however, were to a large extent exercised by the same officers, and in many cases were none too clearly distinguished. Thus the sheriff of New York county was also the sheriff of New York City, and it was not always easy to tell in which capacity he was acting. Likewise it was provided in 1813 [16] that the chamberlain of the city and county of New York should be considered the county treasurer, except as might otherwise be expressly provided—and this provision was continued in the Revised Statutes of 1827–1828. Of course, there came to be, in time, a number of county officers, like the county clerk, district attorney and county judge, who had nothing to do with the city government, and conversely many city officers who had nothing to do with county affairs; but, in general, the interlocking of county and city governments was very marked.

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[7] L. 1854, Ch. 384.

[8] L. 1894, Ch. 356.

[9] L. 1894, Ch. 451.

[10] L. 1894, Ch. 449.

[11] L. 1894, Ch. 450; did not take effect until January 1st, 1896.

[12] L. 1870, Ch. 719.

[13] L. 1894, Ch. 64.

[14] L. 1896, Ch. 488.

[15] L. 1898, Ch. 588.

An act of June 19, 1703, in which provision was first made for the election by towns in the several counties of the state of boards of supervisors, expressly excepted from its application New York and Albany counties,[17] and conferred the powers—relating chiefly to local finances—which it elsewhere gave to these boards of supervisors, upon the common councils of the two cities. It was again provided in 1787 [18] that the mayor, or the recorder, and the board of aldermen of New York City should be—and they were thereby declared to be—the board of supervisors of the city and county of New York, and should be so considered in all laws already made or thereafter to be made, except as otherwise expressly provided. This provision, virtually re-enacted in the Revised Statutes of 1827–1828, remained in force until 1857.

In that year [19] the mayor, or recorder, and aldermen were excluded from the board of supervisors, and provision was made for the election of twelve supervisors at large for the county of New York on a separate ticket—the legal existence of the board, however, being continued unbroken. From then on until 1874 the county government, though still more or less entangled with that of the city, was nevertheless more separate and independent than at any other period.[20]

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[16] Act of April 9, § 151.

[17] §5.

[18] Act of March 23, §3.

[19] L. 1857, Ch. 490, as amended by L. 1858, Ch. 321.

In 1874 [21] the governments of the city and county of New York were finally consolidated, but with the proviso [22] that nothing in the act contained should be construed to affect the election or appointment of county officers whose election or appointment was provided for in the constitution, or any other purposes for which the city and county of New York was recognized in the constitution as one of the counties of the state. (We shall see in a moment that the constitution still remains the only bar to a complete consolidation of the four county governments with that of the city.) Under this act of 1874 the powers of the board of supervisors of New York county were transferred to the board of aldermen of New York City.[23] This act remained in force until 1897.

In Kings county, as we have seen, the city of Brooklyn was not even incorporated until 1834, and did not become co-terminous with the county until 1894. Up to 1854, when Brooklyn absorbed the city of Williamsburgh and the town of Bushwick, the government of the county had differed very little from that of any average up-state county containing one or more large cities. The city took over most of the county functions within its own limits, but continued to elect county supervisors and to share in the management of county affairs. After 1854 the city and county governments became more closely interrelated, but it was not until 1895—after the formation of Greater New York had been virtually determined upon—that a consolidation, similar to that effected in New York county in 1874, finally took place.[24] At this time all the powers of the county board of supervisors were devolved upon the common council of the city. The offices of auditor and supervisor at large of Kings county were abolished, and their powers conferred upon the auditor and mayor, respectively, of the city of Brooklyn. The office of city treasurer was abolished and his powers given to the county treasurer. The county board of charities and corrections was also consolidated with the corresponding city board. This act contained, however, the same proviso as the New York county act of 1874—viz., that the election or appointment of the various constitutional county officers should not be deemed to be in any way affected.

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[20] For interesting comment on the earlier relations of county and city government in New York City and county, see People *v.* Edmonds, 19 Barbour, 529, and Baker *v.* the Mayor, 9 Abbott, 82.

[21] L. 1874, Ch. 304.

[22] L. 1874, Ch. 305.

[23] §3.—Consol. Act of 1882, §§29 and 83.

[24] L. 1895, Ch. 954.

Thus by 1895 the governments of New York and Kings counties had been consolidated, so far as the constitution would allow, with those of New York City and Brooklyn.

As to the governmental arrangements of Queens and Richmond counties prior to 1897, little need be said. The former contained one city of considerable size, Long Island City, but in neither county did the form of government differ materially from that of other counties throughout the state.

Before taking up the changes which were introduced by the Greater New York charter of 1897, and the few modifications which have since been effected, let us consider for a moment the main outlines of the form of government which is provided by the constitution and statutes for the majority of the counties of New York state, in order that we may gain, by comparison, a clearer conception of the peculiar status of the four metropolitan counties.

As in several of the middle Atlantic states, the general governing body of the county is the board of supervisors,[25] one member of which is elected from each town within the county, and one from each city or village, or from each ward of any city or village divided into wards. All the administrative and quasi-legislative powers of the county not expressly conferred upon some other county officer are exercised by the board of supervisors. These powers may conveniently be grouped under six heads, as follows:

1. Care of property and control of public works. This includes the construction and maintenance of county buildings, including a county laboratory, as well as of roads, paths, bridges, monuments, etc.

2. Financial functions, including the power to direct the raising of money to meet town and county charges, and the assessment and collection of state taxes; power to fix the salaries of various county officers when the same are not fixed by law; power to audit town and county accounts, to prescribe the form in which the same shall be kept and to preserve town and county records; power to borrow money and to pledge the credit of the county for bond issues, etc.

3. General ordinance-making powers, including the making of rules

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[25] Const., Art. 3, §§26–27; Consolidated Laws of 1909, Ch. 11—the "County Law"; Art's. 2–7 incl.

governing county office hours, where the same are not fixed by law; the carrying out of the forest, fish and game law and further protection of fish and game; the destruction of noxious weeds and animals; the keeping of dogs, etc.

4. Powers as to boundaries of towns and other districts, including the establishment, alteration and division of towns, school commissioner districts, jury districts and fire districts.

5. Powers in relation to the administration of justice and to the matter of correction. These include the management of the county gaol, provision for the custody and maintenance therein, or in the gaol of another county, of delinquents and persons detained in civil cases, provision of local offices for judges of the court of appeals and of all necessaries for other courts of record in the county, employment of a stenographer for the county court, etc.

6. Powers granted to assist in the enforcement of the foregoing powers and in the general enforcement of the law—*viz.*, the power to require the attendance of witnesses and to question them, or any county or town officer, as to county or town affairs; and the power to bring an action on the undertaking of any county officer.

In addition to the board of supervisors, the constitution provides[26] for the election in each county of a sheriff, a district-attorney and a county clerk, of a register of deeds in any county which wishes to have such an officer, and of a county judge (except in New York county) and surrogate.[27] In some counties the offices of county judge and surrogate are combined in one man; in others they are separate. In all counties except New York and Kings the sheriff, district-attorney, county clerk and register, if any, are to be elected for three-year terms —in New York and Kings for either two years or four years according as the legislature may prescribe. County judges and surrogates, except in New York county, are to be elected for six year terms. The legislature may provide for other county officers, either elective or appointive.[28]

So much for the constitutional provisions. In accordance with that last mentioned, the legislature has provided for the election, in each county outside of New York City, of a county treasurer and from one to four coroners, and for the election or appointment of one or more superintendents of the poor.[29] Any county which desires to do so is also allowed to elect a county comptroller, and to provide for a

[26] Art. X, §1; Cf. also the County Law.

[27] Art. VI, §§14–15.

[28] Const. Art. X, §2.

[29] County Law, Arts. 8, 10 and 13.

county auditor to be appointed by the board of supervisors; and a number of counties have availed themselves of this permission.[30]

In addition to these general provisions, applying to practically all the counties, the legislature has by special acts created a number of additional elective and appointive county officers in particular counties—notably in the county of Erie.

We are now in a position to understand more clearly the changes made in the government of the four metropolitan counties by the Greater New York charter of 1897.[31]

In the first place, all existing municipal or public corporations within the limits of the greater city, with the exception of the four counties, were abolished. Five new divisions for local municipal purposes, were, however, created—the five boroughs, *viz.*, Manhattan and the Bronx (identical in extent, respectively, with the early city and county of New York, and with the portion of Westchester annexed thereto), and of Brooklyn, Queens and Richmond (respectively identical in extent with the counties of Kings, Queens—as left in 1898—and Richmond). These borough divisions hardly concern us.

In the second place, virtually the same transfer of powers which had been made in 1874 and 1895, respectively, from the counties of New York and Kings to the cities of New York and Brooklyn was now made from these two cities, and from the counties of Queens and Richmond, to the new city of New York. All powers formerly exercised by boards of supervisors, or by municipal legislative bodies acting as such, were devolved either upon some purely administrative board or officer of the new city, or upon its board of aldermen acting in conjunction with the mayor and, usually, with the board of estimate and apportionment. Boards of supervisors—consisting for each county of the members of the board of aldermen elected within the county—were to remain in existence for but two purposes, *viz.*, to act as county boards of canvassers for all elections held within the county, and to divide the county, if the same were entitled to more than one assemblyman, into assembly districts.[32] Even this latter power seems to have been taken from the county boards of supervisors by the charter revision of 1901[33] and conferred upon the board of aldermen acting as a unit.[34]

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[30] County Law, Arts. XIV–a, added by L. 1909, Ch. 466 as amended by L. 1910, Ch. 8, and XII–a, added by L. 1910, Ch. 152.

[31] L. 1897, Ch. 378; Cf. also the supplemental act relating to boards of supervisors in counties wholly within a city but not comprising all of such city. L. 1897, Ch. 380.

[32] L. 1897, Ch. 378, §1586; L. 1897, Ch. 380.

As in the consolidation of New York City with New York county in 1874, and of Brooklyn with Kings county in 1895, so now in 1897, the constitution made it impossible to do away with certain elective county officers, or to consolidate their offices with the city government.[35] They were made subject, however, to the complete *financial* control of the city authorities. Moreover, all other elective county offices existing at that time in any of the four counties, as well as some appointive county offices, were abolished—either by the charter of 1897, or by amendments thereto up to, and including, the revision of 1901—and their duties transferred to various city officers.[36] Certain appointive county offices, such as commissioners of jurors, public administrators,[37] and commissioners of records in New York and Kings counties, were, however, left unchanged. It was further provided[38] that no city officer should hold any office under any of the four county governments.

With this brief summary of the changes accomplished between 1897 and the present time, it now remains for me to present, as briefly as possible, a somewhat more detailed and connected view of existing arrangements, and, finally, to indicate, in a general way, the conclusions to which a study of the subject has led.

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[33] §1586.

[34] Certain special acts were passed between 1897 and 1903 relating to the powers of the board of supervisors of Queens county (L. 1897, Ch. 735; L. 1899, Chs. 74, 187 and 414; L. 1900, Ch. 20, and L. 1903, Ch. 155), but, except in so far as these acts postponed the complete taking effect of the general provisions mentioned in the text, they do not seem to have altered these provisions in any important respect. Certainly since the charter revision of 1901, at least, the supervisors of Queens county have been on exactly the same footing as those of the other three counties (L. 1901, Ch. 466, §1586).

[35] Const. Art. VI, §§14–15; Art. X, §1.

[36] The office of county treasurer was abolished in Richmond by the charter of 1897 (L. 1897, Ch. 378, §1587); in Queens by an act of 1899 (L. 1899, Ch. 433.—) and in Kings by the charter revision of 1901 (L. 1901, Ch. 466, §1587). In all three cases the powers of the office were devolved upon the city chamberlain of Greater New York. (L. 1903, Ch. 395.)

The functions of county superintendents of the poor in Queens and Richmond counties were handed over to the department of charities of New York City.

The office of county coroner was abolished and coroners were made thenceforth *borough*, instead of county, officers. (Charter, §§1570–1571.)

[37] The public administrator of New York City was made the public administrator of New York county. (Charter, §1585.)

[38] Charter, §1549.

Let us take, first of all, the powers which we have cited as belonging to the board of supervisors of the average up-state county and see where, under the present scheme of government in Greater New York, these various powers are lodged.

By this process we shall be able to realize more clearly the extent to which the four county governments have been merged in that of the city.

The first of these powers—*viz.*, the care of county property and the construction and maintenance of public works—is divided in New York City among a large number of city authorities. For example, the board of estimate and apportionment and the board of aldermen exercise a general oversight over all city and county property, and have general charge also of the construction and maintenance of all the more important public works. Subject, however, to their financial control, to the ordinance-making power of the board of aldermen and to the general administrative control of the mayor, certain city departments, such as the department of bridges, the department of docks and ferries and the department of parks and playgrounds exercise the actual care of various kinds of city property. The care of the streets is divided between the street cleaning department, the department of water supply, gas and electricity and the several borough presidents; and public works in connection with the streets, such as paving, lighting, sewerage, etc., are under the control of the two authorities last named. Local improvements are initiated and authorized by the boards of twenty-five local improvement districts, subject to the approval of the board of estimate and apportionment (and, where the proportion of the total cost borne by the whole city is over $500,000, to the approval of the board of aldermen as well). When so approved they are carried out by one of the borough presidents. In these local improvement boards we can see certain traces of the original county boards of supervisors and their functions. They are composed, for each local improvement district, of the aldermen elected within the district (usually three in number) and of the president of the borough within which the district is situated. In the borough and county of Richmond they practically amount to a county board of supervisors, for the whole county forms but one improvement district. In the other counties, however, their jurisdictions are smaller—Queens county being divided into two districts, Kings into nine and New York into thirteen. Each board has jurisdiction only over those matters the costs or expenses of which are to be wholly or in part a charge on the people or property of its own district, but two or more boards may combine for an improvement affecting two or more districts.[39] Except in so far, however, as these local improvement boards, though legally city authorities, are in certain respects analogous to, and survivals of, the former county boards of supervisors, all powers elsewhere exercised by the counties with regard to *public works* are in New York exercised by the city government.

The same is true of the *financial* functions elsewhere exercised by counties. In the first place, the annual budget, for the four counties as well as for the city, is made up by the Board of Estimate and Apportionment, subject to the reduction or excision of any items of appropriation by the board of aldermen, which action by the board of aldermen is, in turn, subject to the veto power of the mayor. The charter provides specifically[40] that the board of estimate and apportionment shall "in addition to such other amounts as it may in its discretion provide for public purposes in the city of New York and the several counties wholly contained within its territorial limits, annually include in its final estimate the following sums, which shall annually be raised and appropriated: * * * * * Sixth.—Such sum as may be necessary to pay the salaries of county officers within the counties of New York, Kings, Queens and Richmond, and likewise all other expenses within said counties and each of them which are county as distinguished from city charges and expenses." The other county expenses, outside of salaries, which are referred to in this section consist chiefly of (1) the running expenses of the several county offices and of the various county courts, including the supreme court within each judicial district;[41] (2) the cost of maintaining, at various state and city institutions for the care and relief of the blind, the deaf, the dumb and the feebleminded, children whose homes are in the several counties in question;[42] and (3) miscellaneous items, chiefly connected with the administration of justice.[43]

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[39] Charter, §§425–436.

[40] §230; Cf. also §226.

[41] New York county constitutes the first judicial district; Kings, Queens and Richmond counties, together with the other two counties on Long Island, Nassau and Suffolk, constitute the second judicial district.

[42] This expense is charged against these counties under the mandatory provisions of certain special state laws.

[43] Cf. the Budget for 1911, pp. 289–319, incl. The total expenses for all four counties for 1911 amounted to only $5,453,805.25 out of a budget of $174,079,335.16.

Likewise the fixing of the salaries of county officers, except in so far as these salaries are fixed by state law, is entrusted to "the board of aldermen on the recommendation of the board of estimate and apportionment." [44]

Another financial function of the average county which is performed for the counties within New York City by the city authorities is the levying and collection of taxes for county purposes, and the supervision of the assessment and collection of state taxes. The comptroller is required to include, in his annual statement to the board of aldermen of the amount required to be raised by taxation, a statement of the amount needed to pay the salaries of county officers and other county charges and expenses in the four counties; and the board of aldermen is authorized and directed to levy and collect such amount from the taxable property within each of said counties "to the end that each of said counties shall ultimately bear and pay all expenses necessary to be incurred within the county for county as distinguished from city purposes."[45] In order to comply with this last provision the expenses of each county are added to the general city expenses for the purpose of computing the tax rate within such county; and the tax rates of the different counties are consequently unequal.

Still another financial function of which the four metropolitan counties have been completely deprived is the power to borrow money and to pledge the property of the county as security. It was provided by the charter that the existing debts of Kings and Richmond counties, and a proportionate part of the debt of Queens county and the town of Hempstead, should become charges against the new city of New York, and that all future obligations should be issued or entered into by, and in the name of, the Corporation of the City of New York.[46] All existing laws as to the public debts of the municipal and other public corporations consolidated with the city of New York were to remain in force, but were to be carried out by the new city of New York. "All pledges, taxes, assessments, sinking funds and other revenues and securities provided by law for the payment of " these debts were to be "in good faith enforced, maintained and carried out by " the city of New York,[47] and the city sinking fund commissioners were to act as such for the sinking funds of all these former debts.[48] The counties also specifically prohibited by the charter [49] from becoming indebted for any purpose. Since 1897, therefore, the corporate stock of New York City has been issued in the place of county bonds or bonds of any of the former public corporations within the greater city.[50]

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[44] Charter, §§56, 1583.

[45] Charter, §902, Cf. also §§248–249.

[46] §4.

[47] Charter, §5.

[48] Charter, §204.

[49] §8.

Finally the comptroller of New York City, instead of the county board of supervisors, audits and controls the expenditures of the remaining county officers. The charter provides[51] that "all county charges and expenses and salaries of county officers in said counties and each of them shall be audited and paid by the department of finance out of the fund or appropriation applicable thereto, and the audit of said department in respect to such charges and expenses shall extend to the reasonableness thereof, and shall be, in all respects, as full and complete as the audit of city charges and expenses." The actual custody and handling of county money is performed, as we have seen, by the city chamberlain.

So much for the former financial powers of the metropolitan counties. Three other classes of county powers—*viz.*, ordinance-making powers, powers as to boundaries, and powers granted to assist in the carrying out of other powers—have, under the present arrangements, been handed over for the most part to the board of aldermen of New York City, subject in some cases to the mayor's veto. Some of these powers are also possessed, to a greater or less degree, by other boards and officers of the city government. The point which chiefly interests us, however, is that they are no longer possessed by the four counties.

Finally we come to the powers of the county in relation to the administration of justice. These powers, too, in so far as they are exercised in other counties by boards of supervisors, have, in New York City, been chiefly handed over to the board of estimate and apportionment and the board of aldermen. Thus, for example, it is the duty of these two bodies to make provision for the housing of the various courts and subordinate judicial officers, and to furnish them with such supplies as they may need. It is also their duty to provide for the care of all persons detained in the county gaols.

The actual administration of justice, however, and the subordinate administrative duties connected therewith, are, as was indicated at the beginning of this article, still in the hands of elective and appointive county officers, and constitute the only important county function now remaining—the sole *raison d'être*, one might say, of the four metropolitan counties. Let us glance briefly at the provisions governing these county officers, in order that we may see how these provisions differ from those in force with respect to the other counties of the state.

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[50] Charter, §170. [51] §1583.

In the first place, the various county officers of the four metropolitan counties are governed, to a very much larger degree than those of most of the other counties, by special acts of the legislature. Their salaries and duties, their assistants and employees, and the salaries, duties and office hours of these assistants and employees, are constantly being altered by the legislature, and differ considerably from those of similar officers in other counties. In New York county the county clerk,[52] district attorney[53] and register[54] are elected for four years, and the sheriff for two.[55] In Kings the district attorney is elected for four years and the sheriff, county clerk and register for two.[56] In Queens and Richmond the county clerk performs the duties of register of deeds, and, together with the sheriff and district attorney, is elected for three years—just as in the up-state counties.[57]

Most of the county officers within New York City are given fixed salaries, the principal exception being the sheriff of New York county who still continues to receive for his own use, in addition to a salary of $12,000, one half of all the fees which he collects—a privilege which, it is estimated, nets him, together with his salary, a total compensation of upwards of $50,000 a year.[58]

Coroners, as has already been stated, are no longer county officers in New York City, but are elected, under the provisions of the present charter,[59] by boroughs—four in Manhattan, two in the Bronx, two in Brooklyn, two in Queens and one in Richmond.

In Kings, Queens and Richmond counties the provisions with regard to the county courts are similar, on the whole, to those governing other counties throughout the state. In each of them a county

[52] L. 1897, Ch. 989.

[53] L. 1896, Ch. 888.

[54] L. 1897, Ch. 53.

[55] L. 1895, Ch. 826.

[56] L. 1896, Ch. 772; Cf. also People *v.* Palmer, 154 N. Y. 133, where it was held that, under the provisions of Art. X, § 1, of the Constitution, if the legislature did not fix the term of office of the county clerks, district attorneys, sheriffs and registers of New York and Kings counties at either two or four years, their term should be two years.

[57] Const. Art. X, § 1; also the County Law.

[58] L. 1890, Ch. 523, as amended.

[59] §§1570, 1571.

judge (in Kings there are two county judges) is elected for six years;[60] and in Kings and Queens a surrogate is also elected for six years.[61] In Richmond the county judge acts as surrogate. In New York county, on the other hand, the provisions as to the county courts differ rather markedly from those of other counties. In place of a county judge elected for six years there is a county court of general sessions composed of seven judges elected for fourteen years.[62] Two surrogates are elected for fourteen instead of for six years.[63] The salaries of all these judges within New York City are also higher than those up state.[64] These salaries, and the cost of running the courts, are county charges, but are paid, as we have seen, by city officers.

We see, then, that the merging of the four county governments in that of the city of New York has proceeded about as far as it can under the present provisions of the constitution. Any further consolidation will require a constitutional amendment, under which the remaining elective county officers may become either state or city officers, and may be appointed either by the mayor, by some other city authority, by the governor, or by the higher courts. There are few persons, I think, who will not agree that such a change is eminently desirable. Why should the county clerk and register of deeds be elected by the people if the commissioner of jurors and the public administrator may properly be appointed? And why should the sheriff and district attorney, whose duty it is to enforce *state* laws be elected by the voters of the county? It has recently been proposed that these two last-mentioned officers should be made appointive by the governor, who now has power under the constitution to remove them. It is further proposed that the county clerk and register should be appointed by the appellate division of the supreme court in each department.[65] As for the county judges, the mayor now appoints the city magistrates and judges of the court of special sessions. There is no such fundamental difference between the functions of these courts and those of the county judges and the court of general sessions in New York county but that the mayor might safely be allowed to appoint these latter officers as well. The same is true of the surrogates. If these changes were made it would not be a far cry to the entire abolition of the counties within New York City—or their retention merely as electoral districts in case some of the judges were left elective. Such a change would not only shorten the local ballot but would probably result as well in some saving of expense to the tax payers of the city. It is to be hoped that, at the next constitutional convention, if not before, such action may be taken.

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[60] Const. Art. VI, §14; County Law, Art. 14.

[61] Const. Art. VI, §15; County Law, Art. 14.

[62] Const. Art. VI, §14; also L. 1907, Chs. 411–412. The old City Court of New York City as it existed prior to 1897 was merely continued by the Greater New York charter (§§1345–1346.). Its members are now elected only within New York county, but like the Municipal Court, the Board of City Magistrates and the Court of Special Sessions, it is legally a part of the *city* government, and not of the government of New York county.

[63] Const. Art. VI, §15.

[64] County Law, Art. 14, §232.

[65] Commissioners of jurors in New York and Kings counties are at present so appointed. (L. 1901, Ch. 602.)

COOK COUNTY AND CHICAGO

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The city of Chicago lies entirely within Cook County, and with the exception of a slight overflow into Du Page County, all of its suburban growth lies now and will for some time lie in the same county. Cook County is therefore the second in the United States in population, having 2,400,000 against New York County's nearly 2,800,000. The corporate limits of the city of Chicago include a slightly decreasing proportion of the county's population: in 1890 they contained 92.3%, in 1900 92.4%, and in 1910 90.9% of the total; that is to say, the city's suburban growth is slightly greater than its internal increment. The population of the county now outside of the city numbers 220,000. The area of the city is 191½ square miles; and of the county not quite five times as much, or 933 square miles.

It is of some interest to the problem of government and its possible reorganization to note that only 5 of the 102 counties of Illinois have an area as large as that of Cook, while there are two with actually less area than the present city of Chicago. The average and median size of Illinois counties is 540 square miles against Cook's 933. In population there are only two others that pass 100,000; and the next to Cook, with 2,400,000, or with 220,000 outside of Chicago, is St. Clair with 120,000. On the other hand there are 9 counties with a population of under or approximately 10,000 apiece—less than one sixth of a Chicago ward,—and most of these are decreasing in population.

The county was governed under the first state constitution, 1818–1848, like all the other counties of the state, by a board of commissioners elected at large. In 1848 the option of township organization was offered, and Cook County like all the other northern counties immediately adopted it. The city of Chicago (which had been chartered in 1837) was divided into three towns, each of which had its town meeting and sent its supervisor to sit on the county board with the supervisors of the country towns. The phenomenal growth of Chicago from 1850–1870 soon resulted in gross under-representation of the city population in the management of county affairs—a fact which was conspicuously taken advantage of during the sixties when the legislature and the abortive Constitutional Convention played battledore and shuttlecock between city and county with the control of the city police. In 1870 the makers of the present constitution, rigidly as they applied elsewhere the principle of uniformity and the prohibition of special legislation, made special provision for Cook County. There is prescribed in the constitution a board of 15 members, 10 chosen at large in the city and 5 in the rest of the county—a proportion practically corresponding in 1870 to population, but now giving country voters about 4½ times the representation of city voters; and every annexation to the city, so long as the constitution is unamended, exaggerates the city's under-representation.

At the same time it became more and more apparent that the system of town organization superimposed on the city was a travesty on popular government; and it is only another instance of our characteristic political complacency that not until 1898 were the functions of the towns in assessment and collection of taxes taken from them, not until 1901 were the separate town governments finally abolished, while the separate town election of justices and constables continued until 1906.

The government of Cook County now has at its head a board of commissioners of 15, 10 from the city and 5 from the county, elected at large in the two divisions, all at the same time, in November of every even year. One of the 15 is at the same time elected as president by popular vote. There are also eight executive officers chosen by popular vote for a four-year term in two groups: the state's attorney, coroner, recorder of deeds and surveyor in the presidential year, and the sheriff, treasurer, clerk and superintendent of schools in the intervening even year. There are two tax boards with six-year terms: a board of assessors of 5 members, 2 or 1 of whom are elected every even year, and a board of review of 3 members, one of whom is elected every even year. There are elected also by the voters of the county a county judge and a probate judge, a clerk of the probate court and a clerk of the criminal court every four years between presidential elections, and a superior court clerk and a circuit court clerk in the presidential year, all at the November elections. Every sixth year an appellate court clerk is elected at the same time. A rough estimate indicates that the voter will next fall be asked to pick his county officers from a ballot containing candidates for upward of 80 separate offices, if we count presidential electors, or nearly sixty if we omit them. There will probably be over 400 names on the ballot.

At the same time with the county and general elections the elections of trustees of the Sanitary District are held, 3 being chosen every two years for a six-year term, and one every six years as president. The Sanitary District, a municipal corporation for the construction and management of the Drainage Canal, includes all of the city of Chicago and a strip of territory outside the city, but wholly within the county. The city elections are held separately in the spring; and the city voter has presented to him every fourth year a ballot containing 4 offices only: Mayor, treasurer, clerk, and alderman; every second year, one containing the last three; and in the intervening years he chooses only an alderman.

It is fair to say that there is a much greater chance for intelligent voting in city than in county elections; and the same observation applies with increased force to the direct primaries preceding the elections. The city voter has the issues and personalities of the government of the city corporate presented to him simply and independently; those of the county government not only in an unintelligible. complexity, but mixed with the extraneous forces of state and national politics. This alone would be enough to account for the lower level of county elections; but there is another consideration which should not be overlooked. The city corporate stands in the mind of most men for their local government; it has its picturesque history, its visible physical embodiment, its corporate personality, its stimulus to the pride of its people and its claim upon their loyalty. The county can make no such appeal, and it is a political fact to be reckoned with that however you may urge that the county is an essential part of city government, that the city electorate is almost equivalent to the county electorate, and should assert an equal proprietorship, it is almost impossible to overcome the obsession that the county is an alien thing. There is no more serious consequence of the parcelling out of our local governmental powers and the shattering of responsibility for our municipal housekeeping than just this forfeiture of the sense of identification with government and the force of local patriotism which should be a tremendous asset for American political improvement.

Let us turn now to the main relations which this unwieldy corps of county officers bears to the city population. Let us look first at the fundamental question of finance. Cook County had in 1910 a budget of about 10½ millions; of this amount about 7¾ were raised by the general property tax, about 93% of which was collected in the city of Chicago. Of the miscellaneous income, principally fees, making up the other 2¼ millions, Chicago probably contributed a somewhat larger proportion. This, however, is not the principal interest of the city in county finance administration. The county is the agent both of the state and of all the local governments within the county in the assessment and collection of the general property tax. The city corporate has nothing whatever to do with the valuation of property; that work is done in the first instance by the county board of assessors, elected by popular vote on general ticket, and reviewed by the county board of review, elected in the same way. Judicial appeals from the assessors and board of review go to the county court. After equalization by the State Board of Equalization, the assessment rolls are turned over to the county clerk. To the county clerk also are certified the state tax rate, the county tax rate, the Sanitary District rate, the city corporate, city bond and tuberculosis sanitarium rates, the school building and educational rates, the South, West and Lincoln Park rates, those for several smaller park districts, and the rates for the various towns and villages and school districts outside of Chicago. It is the duty of the county clerk to apply the appropriate rates to each piece of property on the assessment rolls and extend the resultant total as a single charge. In doing so, however, he is restrained by one of the most remarkable exhibits in the whole museum of administrative curiosities: the renowned Juul law. Stated as simply as its nature permits, this law, recognizing the futility for the protection of property-owners of a limitation upon the taxing power of individual governmental bodies, if these bodies are to be piled one on another, declares that the total taxes of all local bodies upon a single piece of property are to be limited. The county clerk is directed, therefore, to set aside the state tax rate and certain favored local rates, such as the school building rate and a third of the Sanitary District rate; to add all other rates falling on any single piece of property together, and if he finds the total to be over 5% to reduce the total to 5% by reducing every component tax in the same proportion; but in so doing he is not to reduce the city tax (normally 2%) below 1.8%, nor the county tax (nominally .75%) below .60%. The process is a most intricate one; nobody outside of the Tax Extension division of the county clerk's office pretends to know the details of it, and the county clerk reveals nothing of the process. No taxing body in the county has the data on which to predict what the result will be upon its own income; the necessary consequence, then, is that every authority, expecting a cut, will ask for enough to cover the expected loss; each doing the same, every tax rate certified is, by so much, higher than it would otherwise be; the higher each one is, the higher the total; the higher the total the greater the cut, and the circle is complete. There is in the whole system no place for a rational consideration and balancing of the needs of the various taxing bodies, nor for a scrutiny of their expenditures; no provision whatever for mutual adjustment and control. The function of the county clerk is a purely ministerial one, and its mysterious exercise is accepted in a spirit of fatalism. It is especially worthy of note in this connection that the county clerk, who is ex-officio comptroller, through whom 40 millions of general property taxes are levied, and who is the responsible accounting officer for a government with a budget of its own of more than 10 millions publishes no report whatever of the former function and of the latter only a perfunctory one buried in the files of the "Proceedings of the County Commissioners." It would be hard to find a parallel reticence.

The county not only levies but collects and distributes the taxes. The collection books, prepared by the county clerk, are delivered to the county treasurer, who is ex-officio collector. After collection, the treasurer apportions the yield among the various taxing bodies in proportion to their levy. License taxes, water rates and special assessments are collected directly by the city.

In addition to finance, the county performs three other principal functions for the city: it administers the courts and the machinery of justice; it is the local charity authority; and it supervises elections.

The county functions in connection with justice are not different, except in extent, from those usual with counties. Cook County has its county judge, who has original jurisdiction over tax, assessment and election cases, and appellate jurisdiction over justices of the peace (now existing only outside of Chicago). There is also a probate judge. Cook County constitutes one of the 18 judicial circuits of Illinois, with an augmented number of judges and a special criminal branch. It also has a superior court, of identical jurisdiction, which does not exist in other counties. Cook County is also one of the 4 appellate court districts of the state, and has a specially increased appellate bench. The state's attorney, a county officer, is public prosecutor, and divides with the mayor and the city police, in a somewhat vague manner, responsibility for law enforcement. Three years ago, for example, when the mayor refused, as he has done ever since 1871, to enforce the Sunday closing law for saloons, the state's attorney was prevailed upon to institute prosecutions; and the present state's attorney has interested himself in the condition of the city police force sufficiently to send to Joliet one of the inspectors. The coroner performs the usual functions, which could better be done by some one else. The sheriff is executive officer for all courts of record in the county, and keeper of the county jail. He has undefined powers as conservator of the peace, within as well as without the city limits. More than once special deputy sheriffs have been sworn in to keep the peace and protect property on city streets. The jury system in all courts of record is administered by jury commissioners appointed by the judges of the various courts jointly. It is appropriate to notice here that the judges of the circuit court have the duty of determining the number of employees to be allowed in the county fee offices; and that the judges of the same court appoint the South Park commissioners. The city has a system of municipal courts, and maintains a house of correction and school for juvenile delinquents.

The county and not the city is the unit of local charity administration. Excepting the Municipal Lodging House and a tuberculosis sanitarium soon to be opened the city maintains no institution for charity. The county, on the other hand, has a department of poor relief, a county hospital, an infirmary (poorhouse), a hospital for insane (soon to be taken over by the state), a tuberculosis hospital, and a juvenile home.

The election machinery of Chicago is in the hands of a board of election commissioners appointed by the county judge, and removable by him. It is the duty of these commissioners to divide the city into election precincts after each presidential election, to appoint election officials, and to supervise the conduct of elections. For this purpose they may command the services of the city police, and the county judge may swear in special deputies to assist in protecting the regularity and purity of elections. It is this power over elections which has made the office of county judge an especially coveted prize; and here at least is a judicial office whose political aspects are far more conspicuous than any others.

In political party organization also, the county and not the city is the unit. The county central committee is the local representative of state and national parties, and upon its executive committee sit the powers that be in the party machines. Although the city vote is preponderant, the partnership with the county has had a considerable significance in Chicago politics. The vote of Chicago has been evenly enough balanced between the two great parties to make the addition of the strongly Republican county vote an important factor; and the delicate adjustment of Democratic and Republican votes in the various local primaries and elections, and of political prizes in city hall and county building has been a field which has employed and rewarded expert political tradesmen—none perhaps more expert than the present junior senator from Illinois.

There are a few minor functions performed by county officers within the city of which a mere mention will suffice: the recording of real estate transfers and registration of titles; the nominal supervision of the school statistics upon which the distribution of the state school fund is based; and the issuance of a few licences such as hunting licenses and marriage licenses.

Probably no student of Chicago government would contend that the county performs any of these functions better than the city would perform them, or that any of the interests now entrusted to the county are safer there than they would be if administered by officials responsible only to the city electorate. On the other hand the fact of division and duality in itself is one of the conspicuous hindrances to governmental progress in Chicago. We are happily past the day when the theory of governmental paralysis in the interest of public safety, the theory of checks and balances, is the controlling one in political reconstruction. Neither have the demands of any ideally conceived symmetry or uniformity of institutions the force they once had with us. We seem to be emerging in our political philosophy from a dogmatic idealism to a frank empiricism and pragmatism. So far as the Chicago and Cook County situation has any contribution to offer to the general county-city problem, it is merely to declare that sooner or later the county system must yield in such a community to the demands of expediency. The order of the day is simplification, and one important step toward a simplification of our local government, most pressing on the financial side, must be a consolidation of county and city government, either with the present boundaries of Cook County, or preferably by a division of territory and the erection of a new city-county to include in one organization the whole local government of Chicago and its surrounding suburban area.

As a practical matter, our prospect for relief is a rather unpromising one. The government of Cook County is imbedded in the constitution; the constitution forbids the creation of new counties of less than 400 square miles of area, or one whose boundaries run within 16 miles of an existing county seat. The constitution is exceedingly difficult of amendment at best; two amendments, those for the initiative and referendum and for the reform, are fighting for precedence; and most important of all, the apathy or hostility of the town-state vote must be overcome before Chicago can hope for a remedy for its local difficulties.

THE SCHEME OF SEPARATION OF CITY AND COUNTY GOVERNMENTS IN SAINT LOUIS—ITS HISTORY AND PURPOSES

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The city of St. Louis and the county of St. Louis are two totally separate and distinct political subdivisions of the state of Missouri. The city of St. Louis is, for all political purposes, a county as well as a city, and has been such since the adoption of the Scheme and Charter in 1876. It is the existence in the city of St. Louis of the powers of a county, and its character as a political subdivision of the state, which makes it unique among the cities of the United States. At the time of the adoption of the charter I believe there was no other city in the United States which was organized in a similar manner, though subsequently other cities have framed charters more or less along the lines of that of St. Louis. In fact, the St. Louis Charter was, at the time of its enactment, considered by many a model instrument. The idea of "home-made" charters became popular. The spread of the so-called "Missouri Idea" was shown by amendments to the constitutions of several states. Most of these provided for a degree of "home-rule" for cities. The importance of the separation between the city and county which had taken place in St. Louis seems to have been largely overlooked in the legislation which followed, both in Missouri and elsewhere. That separation, however, was absolute. It was not a consolidation of the city and county. The city was carved out of the county of St. Louis, and made, for all intents and purposes, a separate county.

St. Louis originated as a corporate entity in 1809, when it was incorporated by the court of common pleas for the district of St. Louis, under authority of an act of the legislature of the territory of Louisiana. After the admission of the state of Missouri into the Union, St. Louis received a new charter from the legislature on December 9, 1822, and from that date until 1876, when the present charter was adopted, the city continued to be operated under various charters enacted by the state legislature. The state was continually changing and altering the charter of St. Louis; the limits of the city were constantly extended; in fact, the legislature of Missouri showed the same tendency which has been apparent throughout the other states of the Union, to be constantly tinkering with the charters of the large cities. These changes and amendments, it is needless to say, were not always enacted for the benefit of the city itself, but frequently for political motives, to give some advantage to the party in power in the legislature. Frequently also, these amendments were offered by the city's own representatives, to serve their private ends and for purposes of purely personal advantage.

From 1852 to 1876 the city charter was changed almost every year. Experiments were made with two houses in the municipal assembly and with one. In 1870 the corporate limits of the city were again extended to embrace the town of Carondelet, and a revised charter was enacted. It was under this legislative grant, as amended from year to year, that the city was operating, when the proposition was made for the adoption of the present charter. At that time the city was suffering from two distinct evils, first, the dominance of county politics in the administration of city affairs, and, second, the control of city affairs by the state legislature. I think an examination of the literature of the time will show that the general impelling motive for the adoption of the present charter was a desire to be rid of interference in local affairs by the state government. This charter represented a tremendous advance in the government of the city along almost every line, and the separation from the influence of the county was undoubtedly one of the motives which strongly induced the voters to adopt it; but the fact that the charter was not under the control of the city and was being constantly changed and amended by the state, was, I think, felt as the chief burden from which the voters desired to rid themselves.

An examination of the session acts of the state prior to 1876 will show in what great detail the state undertook to regulate city affairs. This is true not only of the affairs of the city of St. Louis, but of all the cities in the state. The acts are packed with local statutes referring specifically and by name to various cities, such as Joplin, St. Joseph, Jefferson City, Kansas City and St. Louis. By these acts, the duties of the mayor were defined as were also the duties of the city marshal and the method of appointing officers; police courts were established, and the duty of police justices defined; the method of taxation and the rates of taxation were set out. There is no conceivable subject, in relation to purely municipal affairs, which the legislature did not control at will. The public debt of cities was limited only by such provisions as the legislature saw fit to enact, and a politician who desired, for his own purposes, to increase the public debt of a city, did not usually find it difficult to obtain legislative consent.

In addition to these evils, which were by no means peculiar to St. Louis, nor even to cities of Missouri, St. Louis was burdened by the presence of county officers, and the control of many municipal affairs by the county. There were, of course, certain matters which were properly subjects for state regulation, such as the election of judges, the preservation of the peace and the collection of state revenue. In regard to these, there seems to have been little conflict between city and county authorities, but other matters which are in their nature such as should be controlled by the local authorities, were partly under the power of city officials and partly under the authority of the county court. The county, in addition to being a political subdivision of the state, was a corporate entity with many purely local duties to perform, and its corporate powers were represented and embodied in the county court. As far as the government of the city was concerned, the county of St. Louis was the county court, and the county court was the county of St. Louis. This court sat within the city. There were seven members. It had the power to appropriate money for a great many purposes; it spent money yearly for the improvement of the roads and the public buildings in St. Louis County. Charges of extravagance were freely made, and were, I have no doubt, justified. The appropriation for roads and bridges by the county court the year before the adoption of the present charter, amounted to $300,000, and other expenditures were proportionate. The citizens of St. Louis, of course, paid by far the large portion of this burden. The taxes of the county were collected very largely in the city and expended very largely in the county. There was a loose system of administration of county affairs. No adequate check was kept upon the expenses of the county court; salaries were high; office-holders were prospering; embezzlement was by no means unknown, if we may judge from the accounts in the daily press of the time. A system of extravagance in the administration of public affairs had grown up, which was felt chiefly by the citizens of the city, and which they found extremely difficult, if not impossible, to control. There were a great many more offices than was necessary for the administration of public affairs. This double system of government, as it was labeled in the press of the time, was felt to be a reckless scattering of the public funds.

The charter enacted by the legislature in 1870 was a rather crude instrument. There seemed to be no relief in sight except by a radical departure from the former state of affairs. The demand was made first for a new constitution of the state of Missouri, and, second, for a new charter for St. Louis.

The first step which was taken was the enactment of a new constitution. By this constitution, it was supposed that a new order of things would be initiated affecting all the cities of the state. Limits were placed upon municipal indebtedness; cities were prohibited from lending their credit to any individual or association or from becoming stockholders in any corporation, association or company; the legislature was forbidden to pass special and local laws, regulating the affairs of counties, cities, townships, wards or school districts or incorporating cities, towns or villages or changing their charters. It was required that the general assembly should provide, by general laws, for the organization and classification of cities and towns, and that the number of classes should not exceed four, and that the powers of each class should be defined by general laws, so that all municipal corporations of the same class should possess the same powers and be subject to the same restrictions. In addition to these four classes, the constitution specially provided for the city of St. Louis, and also for any city having a population of more than one hundred thousand inhabitants. By different provisions St. Louis, and any city having a population of over one hundred thousand inhabitants, were given the right to make their own charters.

By section 20 of Article IX of the Constitution, it was provided that the city and county of St. Louis might elect a board of thirteen freeholders, whose duty it should be, in the words of the constitution, "to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganizations of the government of the county, the adjustment of the relations between the city thus enlarged and the residue of St. Louis County, and the government of the city thus enlarged, by a charter in harmony with the subject to the constitution and laws of Missouri." It was further provided that this scheme "as submitted by the board of freeholders, should then be submitted to the voters of the whole county, and that the charter should be submitted to the qualified voters of the city."

There are one or two other rather interesting provisions in regard to this charter, contained in the constitution. For example, in Section 23, it is provided that, "in the adjustment of the relations between the city and county, the city shall take upon itself the entire park tax, and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged, shall be entitled to the same representation in the general assembly, collect the state revenue and perform all other functions in relation to the state, in the same manner as if it were a county, as in this constitution defined." And then, by Section 25 of Article IX, the Constitution enacted a provision, which to some extent at least, counteracted the beneficial effects which were anticipated from the charter. That provision was: "Notwithstanding the provisions of this article, the general assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this state."

The purpose of these provisions is obvious. It was to prevent the state legislature from constantly meddling with local affairs of cities. Having accomplished this much, the advocates of reform devoted their attention to the forming and adoption of a scheme of separation between the city of St. Louis and the county of St. Louis, and of a municipal charter for the city. Prior to this time, apparently the matter had not excited a great deal of interest among the citizens at large. There had been, it is true, opposition to the adoption of the amended constitution. The representatives of the outlying portions of St. Louis County at the convention, were strenuously opposed to what they called a "divorce between the city and county."

After the adoption of the constitutional amendments a fight was inaugurated between the advocates of reform and the adherents of the old regime, and this fight was conducted along familiar lines. The reformers were represented by the *St. Louis Republican*, and the opponents of the new proposition, by the *St. Louis Globe Democrat* and the *St. Louis Daily Times*. The opponents of the new charter were called "bummers," "schemers" and "ring-masters"—"tax-eaters"—against whom the tax-payers were warned. The people were urged to vote down the politicians, the office-holders who fatten from the public purse, to do away with the domination of the country court and the interference of the state legislature. The *County Republican* says, in an editorial of August 22, 1876: "If the Scheme and Charter are defeated, the tax-payers go down with it, and those who live and thrive on expanded revenues, contracts and official salaries, become established in power and influence more firmly than ever. . . . It is not an accident that the county court, the members of the present city council, one half of all the city and county officials, and all the trained professional politicians in the wards are arrayed against the proposed measures. It is not a chance that the whole swarm of aspirants to the county offices, Democrats and Republicans, are on the same side. It is a significant fact; it reveals the nature of the contest and shows clearly enough where the tax-payers' proper place is. If that class of persons who devour revenues are all on one side, the other class of persons who pay the revenues, may safely conclude that they ought to be on the other. It is natural that the new charter should encounter the opposition of those who are fighting it. They look on it with horror. Its iron prohibitions against debt and extravagance and its political exactions of accountability and severity against public officers, are odious to them. They like the slipshod, happy-go-easy way of doing things, under which we now live, and which leaves the people no redress for defalcations and embezzlements."

And in the same issue, there is another item in regard to the new charter and the city debt. It is pointed out that the debt at that time was something over $17,000,000, and the writer, commenting upon this, adds: "For ten years past we have been increasing our indebtedness until we have got it up to the present proportions. Here it must stop and here it will stop if the new charter be adopted, and that is not all. The new charter not only prohibits the debt from growing any larger, but it provides for its gradual and certain liquidation."

Under the legislative charter, prior to the adoption of the present one, there was but one branch of the municipal assembly, which was known as the city council. This body was evidently in great disrepute, and one of the benefits to be gained by the adoption of the proposed instrument was the abolition of this council. As was stated by an editorial writer of the *St. Louis Republican*, the adoption of the new charter would result in a reorganization of city affairs, and it would be "soon, swift and pangless with the present city councils."

Shortly after the adoption of the charter, its effect upon the public expenses was very marked. In a speech by the Hon. T. T. Gantt, made before the Missouri Historical Society, upon the public career of Mayor Overstolz, who was the first mayor under the new charter, it is stated that the city had found it necessary to raise revenue by the issuing of so-called anticipation bonds. These bonds bore interest and could only be sold at a discount. This method of raising revenue was a very burdensome one. During the years 1870 and 1871, the city issued $1,050,000 worth of these anticipation bonds, and this amount increased until in 1875–1876, the year before the adoption of the charter, $1,550,000 worth of bonds were issued. Immediately thereafter, the amount of bonds issued began to decrease, and in 1879–1880 only $350,000 were issued. At the present time the issuance of such bonds has long become a thing of the past.

The abolishing of the county court and the doing away with county offices in the city of St. Louis undoubtedly resulted in a large saving of money. The board of public improvements, which under the new charter took charge of public works, expended less money, but according to Colonel Gantt, the expenditure was more judicious and the improvements were of a better character. So great was the retrenchment of expenses by the board of public improvements, that the machine politicians and all the enemies of good and economical administration of municipal affairs, desired vehemently to abolish the board, even if they could not in all other respects abolish the new charter.

The results following during the next five years were evidently highly satisfactory. The expenses of the city were reduced, and this resulted in reduction of taxation. The management of public institutions was more efficient and the system of administering public works was much improved. The new charter placed a direct responsibility upon the heads of departments, and gave them the power to appoint their assistants and subordinates. It provided for a sort of ambiguous civil service, by making the tenure of office of assistants, "during good behavior," subject, however, to removal at the will of the head of the department. Responsibility for the administration of public affairs became more concentrated; the charter was a long step, at least, in the right direction. This charter was for many years considered a model. The peculiar provisions for the operations of the board of public improvements have been regarded as the best scheme yet devised for the letting out of public work.

To return to the relations of the city and county. At the present time, the important thing is that the city is entirely free from any county interference whatever. There are no county officials in the city, and the city is entirely free from county taxation. The officials in the city are either municipal or state, and many of them perform the functions of both. It is frequently difficult to say whether a given official is to be regarded as a state or a city officer.

For example, the collector of the city holds an office created by the charter, but he collects the state taxes and the school taxes, as well as the city taxes, and very explicit provisions are enacted for the proper accounting of each fund. The license collector, on the other hand, is created by state law. He collects licenses due both to the city and to the state. The circuit attorney is a state officer; justices of peace are state officers; so also are the prosecuting attorney and the judge of the court of criminal correction. Yet all of these officials receive their salaries from the city. The state law, creating the office in each case, provides that a certain salary shall be paid to the officer out of the treasury of the city. The judges of the circuit court in the city of St. Louis are state officers and receive part of their salary from the state, but the statute provides that the city shall pay a part of their salaries. In fact, the city pays more than three-fifths of it. It is thus apparent that the entire conflict at present as between various officers in St. Louis and various functions of government in St. Louis, is bound to be a conflict between the municipality and the state. All conflict between the city and the county has been eliminated.

The predictions of the advocates of the charter in 1876, that it would free the city from legislative tinkering by the state legislature, have not been altogether fulfilled. To begin with, the constitution, which forbade the passage of any special act affecting cities, also provided for the classification of cities, and that the city of St. Louis should be subject to state control, just as any other city within the state. The result has been that the legislature can very easily frame a law so as to effect the city of St. Louis, by merely enacting a statute on its face applicable to all cities having more than three hundred thousand inhabitants. This number was selected by the legislature because St. Louis was the only city within the state having more than that number, so that it has become a truism in regard to the statutes of Missouri, that all legislation affecting cities of three hundred thousand inhabitants or over, is legislation aimed directly at St. Louis. In three instances, especially, has the legislature practically enacted provisions for the control of municipal affairs. These three instances are: 1st, the election laws of the city of St. Louis; 2d, the police laws; and, 3d, the law creating the office of excise commissioner.

The charter, as originally passed, contained provisions for election and registration of voters. These provisions, however, were subsequently annihilated by the legislature. The same thing has happened in regard to the excise commissioner. Under the original charter, the collector had full charge of the issuing of dramshop licenses in the city; but in 1893, a law was enacted by the legislature, creating the office of excise commissioner for the city of St. Louis, thus abrogating the provisions of the charter. So, in regard to the license collector; originally, the collector performed the duties now performed by the license collector, in addition to his other duties. Subsequently, the city, by ordinance, created the office of license collector and transferred the duty of issuing licenses from the collector to this new officer. This ordinance furnished a suggestion to the legislature, and on March 26, 1901, an act was passed creating the office of license collector for St. Louis. This act was also in derogation of the provisions of the charter.

In 1899, the legislature enacted a police law for St. Louis, which increased the number of policemen and also increased their salaries. It created a board of five police commissioners, four of whom are appointed by the government. The fifth member of the board is the mayor. Drastic measures are provided to compel the city to make the appropriation for the payment of the police force so created. It is made a criminal offense for any member of the municipal assembly, or other city official, to obstruct the enforcement of the act or to refuse to vote for the necessary appropriation.

Numerous other cases might be cited, but enough has been said to show that the charter obviously did not secure for St. Louis the complete local control of municipal affairs which was confidently predicted at the time of its passage. This matter has become one of the issues in Missouri politics. At every election promises are freely made of home rule for the city of St. Louis, and provisions to that effect are inserted in the party platforms; but such home rule as St. Louis enjoys, in regard to her police force, her board of election commissioners and her excise commissioner, she enjoys at the will of the governor. Of course this state of affairs is not confined to Missouri. It is one of the evils against which our larger cities have been contending throughout the country. The chief mischief lies in the fact that the legislature is not particularly concerned with the affairs of the city. Many of the delegates who come from the country or from other cities, take little or no interest in the question. They are willing to trade off their votes, and to support a measure introduced for the personal aggrandizement of some representative from St. Louis, in return for the support of such representative in regard to a pet measure of their own. At present, the evil does not rest heavily upon St. Louis, but the city is always threatened with some hostile legislation from Jefferson City. On the other hand, when a beneficial measure is proposed which might easily be carried in the city, the state legislature refuses to act. The purpose of the amended constitution of 1875, and of the charter was obviously to secure to St. Louis and other cities in the state, local control of municipal affairs. In this purpose, the charter has in a measure failed.

As to the separation which it accomplished between the city and the county of St. Louis, however, the charter was a complete success. The citizens of St. Louis are no longer burdened with a county tax, and they hear nothing of county officials or of the county court.

Some new questions have, however, recently presented themselves, in the relation between St. Louis city and county—questions which could not have been foreseen at the time of the separation.

Since 1875 the city has grown rapidly and has extended its population beyond the limits as established by the charter. Under that instrument, there is no provision for the further extension of the city limits. This was one of the points urged in favor of its passage in 1876. To extend the limits of the city would be to allow one political subdivision of the state to encroach upon the territory of another, and as the territory of St. Louis, contiguous to the city, becomes more and more densely populated, the question of the preservation of public order just across the border, is becoming important; so, too, the question of the proper disposal of sewage and the supplying of county residents with water.

In 1905, for example, there was a race track known as the Delmar Race Track, operating in St. Louis county just across the boundaries of the city. Several car lines ran from St. Louis to this race track, and the casual observer would have supposed that it was within the city limits. The race track was operated in defiance of the general law against gambling and betting on horse races. The failure of the county to suppress it became notorious, and finally, acting under the orders of the governor, the police department of St. Louis proceeded to arrest the men in charge. The officers who actually made the arrests were themselves arrested by county officials and brought before a justice of the peace, charged with illegally breaking into the race track and with illegal assault upon the men in charge. A writ of prohibition was applied for, to prevent the justice of the peace from taking jurisdiction of the matter, and in the case of *State ex rel* v. *Stobie,* 194 Mo. *p.* 14, the supreme court ruled that the police department of St. Louis had no power or authority to make arrests in St. Louis county of persons for offences committed in the county. The decision, of course, met with the unanimous approval of the unlawful elements who operated in St. Louis county. At several places, just across the border, and where citizens of St. Louis congregated, there have recently been operated picture shows, gambling devices, theaters where vaudeville performances advertised under suggestive titles were given, and men have operated roullette wheels, shell games and other fraudulent schemes. All of these things the city is unable to suppress. The remedy lies in a proper administration of the law by the county, but the county is hardly to be blamed because these acts occur mostly in places which are for all practical purposes a part of St. Louis, and the offences are committed by residents of St. Louis, who seek the county as the field of their operations.

Another difficulty which grows out of the inability of the city to increase its boundaries, is the fact that small suburban cities grow up at its very gates, which are duly incorporated. The statute law of the state provides that no city or town shall be incorporated within two miles of the limits of any other city or town in the same county, but as St. Louis is not in St. Louis county, this provision is not applicable. The result is that we are threatened with a complicated system of adjoining cities which logically, and for practical purposes should be consolidated as one.

Of course, there are remedies for all of these situations. The framers of the charter could not be expected to have foreseen the results of the growth of the city. In accomplishing the complete separation of the city and county, they conferred upon the city an inestimable benefit.

The charter is not perfect. It is easy to find fault with it. No instrument can quite guarantee the public against official corruption. There have been dishonest assemblies; men have been charged with and convicted of bribery, and St. Louis has received her due share of advertisement on account of municipal corruption. Recently a new charter was submitted to the voters by a board of freeholders. This charter was framed along lines of greater concentration of authority and responsibility. It was, however, defeated at the polls. But no one, of late years, has ever suggested that the present charter made a mistake in separating the city and county. That separation, I believe, has resulted in unqualified good, and I do not believe that any one could be found in St. Louis who would advocate a return to the old conditions.

CONSOLIDATED CITY AND COUNTY GOVERNMENT OF SAN FRANCISCO

BY PERCY V. LONG

City Attorney of the City and County of San Francisco

The history of San Francisco as a municipality is unique.

Two former Mexican pueblos, Yerba Buena and San Francisco, had been permitted to lapse and a Mexican Justice of the Peace exercised sole authority up to July 8, 1846, over the "Jurisdiction of San Francisco" which contained within its limits what remained of these two villages.

On July 8th, 1846, the American flag was hoisted on the plaza of Yerba Buena, and the surrounding territory was declared American soil. Military government prevailed until January 30th, 1847, when a provisional government was organized with an Alcalde as Chief Magistrate. The machinery provided by the Mexican colonization laws for the creation and government of pueblos was utilized and San Francisco as a municipality came into being by Ordinance of the Alcalde. Subsequently attempts were made before the treaty of Queretaro to organize a City along American lines, but were by military order stopped. Pueblo government continued until the adoption of a city charter under the Constitution of California.

An Act of the first Legislature of the State of California, passed February 18, 1850, divided the State into counties, fixing the boundaries of San Francisco *County.*

The *City* of San Francisco was created by Act of April 15, 1850, (Statutes 1850, page 223) which was an act to incorporate the City. This Act provided for a complete organization of the City and a full set of offices independent of the county offices of the County of San Francisco. Thus there were two sets of officers, one for the City and one for the County. The Act creating the County, and also the Act creating the City, were amended at subsequent sessions of the Legislature, and finally, on April 19, 1856 (Statutes 1856, page 145) an Act was passed "To Repeal the Several Charters of the City of San Francisco, to Establish the Boundaries of the City and County of San Francisco, and to Consolidate the Government thereof."

From *Martin* v. *Election Commissioners*, 126 Cal. at 407–8, we find the following language of the Supreme Court of this State, referring to this Consolidation Act.

> "By the first section of said act it is provided that 'the corporation or body politic and corporate, now existing and known as the city of San Francisco, shall remain and continue to be a body politic and corporate in name and in fact, by the name of the city and county of San Francisco, and by that name shall have perpetual succession, may sue and defend in all courts and places, and in all matters and proceedings whatever, and may have and may use a common seal, and the same may alter at pleasure; and may purchase, receive, hold, and enjoy real and personal property, and sell, convey, mortgage, and dispose of the same for the common benefit.'
>
> "By the second section it is provided that 'the public buildings, lands, and property, all rights of property and rights of action, and all moneys, revenues, and income belonging or appertaining either to the corporation of the city of San Francisco, or to the county of San Francisco, are hereby declared to be vested in, and to appertain to, the said city and county of San Francisco; and the moneys in the treasury of said city, and in the treasury of said county of San Francisco and all the revenues and income from whatsoever source arising, including delinquent taxes upon persons and property appertaining to the said city or to the said county, shall be handed over, paid, and received into the treasury of the city and county of San Francisco as a part of the general fund.' "

At that time, as now, San Francisco was the only instance of a consolidated City and County in California.

The City and County continued to be governed by the Consolidation Act, with certain amendments thereto, down to the adoption of the present Charter, which was prepared and proposed by a Board of Freeholders, elected December 27, 1897, in pursuance of the provision of the State Constitution authorizing the adoption of charters as the foundation of government for "Any city containing a population of more than three thousand five hundred inhabitants," and further providing that:

> "City and county government may be merged and consolidated into one municipal government with one set of officers ,and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes."
>
> "Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed to provide for the manner in which, the time at which, and the terms for which the several county officers shall be

elected or appointed, for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies."

This charter was ratified by a vote of the people of the City and County, May 26, 1898, and approved by the Legislature of the State, as required by the Constitution, January 26, 1899. The Charter was in full force and effect, January 8, 1900. It has been amended at three different special charter amendment elections held since its first adoption.

The immediate occasion for the consolidation of the City and County governments in 1856, was the same corrupt and extravagant *City* government in San Francisco that led to the formation of the famous Vigilance Committee, which did such effective work in this early period of the City's history. Inefficiency, extravagance and flagrant corruption in the conduct of the City government, as contrasted with the economical and efficient management of the County government, led to relief being sought from the State Legislature, so that the good results accomplished by the Reform Movement back of the Vigilantes, in the local San Francisco elections, might find permanent security in a new form of government which would make more difficult, in the future, a relapse back to the old conditions of extravagance and waste which were thought to be inherent in the dual form of government that had prevailed in San Francisco. And thus, we find that, just as in more recent years, the election of good officials has led to their securing the perpetuation of the policies for which they stand, so in this beginning of our City's history, these "Progressives" of the days of '56 realized the value of legislative enactment as a co-operating force to support the efficient men elected to public office, and to prevent, in some degree at least, a recurrence of conditions against which they had contended.

We can best appreciate the view point of these early leaders of public life in San Francisco by reading what they said and wrote when the question of the passage of the Consolidation Act was a matter of public and legislative discussion.

In a petition which was circulated for signatures, when the Legislature was considering the Consolidation Act, we find the following:

"To the Legislature of the State of California:

"The undersigned petitioners, citizens of the City and County of San Francisco, respectfully represent to your honorable body that the city of San Francisco is suffering from an enormous burden of debt and taxation. That, unless some measures are adopted to relieve the city from this oppressive weight of debt and taxes, they will deter the investment of capital, drive population from the State, and blight the growth of this place, with which that of the State at large is intimately identified.

"Your memorialists represent, that without a change in the City Government, which shall diminish the weight of taxation, the City will neither be able to discharge the interest on debts already contracted, nor meet the demand for current disbursements.

"The undersigned as one means of greatly diminishing present expenses and taxation, ask that the present City Government may be abolished. It supports an army of officers and dependents, who are of little practical use either in preserving order or keeping the streets in repair.

"The Mayor is, perhaps, a necessary officer in the capacity of Recorder and to guard the general interests of the city, but the whole police force is a useless expense, whose duties may or will be discharged by the Sheriff and the ordinary Constables. We see no utility in a city Government separate from that of a county. The county officers can as well discharge all the duties of the City Government as those who hold office under a city charter.

"The present condition of the streets and public improvements of the city, abundantly attests the total inefficiency of the present system. It would be far perferable to impose the improvements and repairs of the streets on the property holders, than to levy assessments and street taxes, which are seldom applied, while the streets and highways are left in a ruinous condition."

The Consolidation Bill was drafted by Horace Hawes, State Assemblyman from San Francisco, and Senator Wm. W. Hawks made a fervid speech in support of this measure in the State Senate, on April 25, 1855. This speech teems with the sarcasm and personalities and grandiose style so prevalent in the early, and, in fact, in some of the later legislative debates, but, we may well understand the sincere motive for good government at the bottom of this Legislator's advocacy, by quoting at length from this speech, some portions of which seem to come down through these years to times more recent and conditions not so very different.

Referring to the opposition to this Bill from one of the members of the Senate, Mr. Hawks said:

"And now, Mr. President, we come to the Senator's complaint that by this bill we are taking the corruption of the city, and throwing it into the present pure stream of the county affairs, against the county's wish.—No, sir. We propose to draw the city out of the corrupting influences that at present surround her. We propose to throw aside and abjure this disgusting mass of trickery and corruption and fraud;

we propose to strike into a thousand atoms the intricate wheels and levers of this infernal machine called a charter, under whose terrible operations the life blood has been drawn, the energies have been crushed, and the prosperity destroyed, of the fairest city on the Pacific coast. We propose to annihilate that dreadful engine, to the mournful music of whose workings fraud has stalked abroad in the light of day; infamy has carried on its unblushing revels, and honest toil and enterprise have gradually pursued their feeble and tottering steps to destruction. We propose, sir, not to inflict this curse upon the county, but having turned the stream of reform through the rank pollution of that vast Augean stable, we propose to place the city, regenerated and newly born, under a simple and economical city government. This, sir, is what the bill proposes to do. And I ask, sir, in the name of oppressed thousands, whose enterprise to themselves at present is as nothing, and whose prosperity is blighted, that this bill may pass. . . .

"The Senator further argues that the county is doing well enough, and needs no change in her government. He tells us that the very men who have been managing affairs of the city, and driven her to bankruptcy, have managed the affairs of the county perfectly well. I ask, sir, no stronger argument in my favor. It is because this county government is so simple, that opportunities of fraud do not occur; that even the men who have ruined the city, have been powerless to rob the county.—We propose, sir, to put the city under that same simple government. Its policy has been well tested.

"This, sir, is not a question as to which is the best charter to give that city. It is as to the theory of giving her any charter at all. If she could be entrusted with any charter, I freely admit that I believe in my heart none could be better than that draughted by my colleague in the Lower House, (Mr. Johnston). But no charter will cure her of her deadly malady.—There is a poisonous ulcer eating into the heart of that fair city, that all the salves and unguents spread upon the face of a charter cannot heal. No plaster will effect a cure. If it were a good charter, it might for a time hide from view the hideous mass of festering corruption that is teeming there, and perhaps kindle in the bosoms of some few despairing sufferers a faint hope of happier days; better never to be kindled for the happiness of the waking hour of the deluded dreamers. No plaster will cure that ulcer, but the knife—the knife—must be applied, and the ulcer must be eradicated. The boreworm has eaten into that city's heart until its caverns but return a hollow echo of its once healthful palpitations. Radical, thorough and sweeping reform is needed, and will alone save her from perdition. The surgeon's knife must be applied, or political and financial mortification will surely ensue.

"Sir, I have known that city since she was nothing more than a modest collection of frame houses and canvas tents. I have seen her progress over all obstacles. The Fire King has been no stop to her. The pestilence has not barred her path to glory; the energies of her people have laughed to scorn calamity, disaster and death, in their resistless march of improvement. But, alas, it was reserved for internal treachery to render futile her energies, and convert her splendor into mockery —a mockery the more bitter from the surpassing beauty of the monument which perpetuates it. It is urged that under a charter government she has attained to her present grandeur. It is so; for up to this time, honest enterprise has outweighed the machinations of plotting and corrupt officials. They have at last, however, brought down their victim, and all bleeding and panting, it lies at the feet of its conquerors. Enterprise in San Francisco has at length been weighed in the balance against rascality, and enterprise has been found wanting.

. . .

"And what has brought us to this state of things? This intricate system of government: affording a thousand chances for plunder, and yet a thousand cloaks to hide the Caitiff who robs a trusting people. This duplicate set of officers, officials, hangers on, loafers, whippers in and general plunderers. . . .

"Now, Mr. President, in a few words, I will have done. Upon this bill I have expended all my energies, and any ability I may possess. I am conscientious in my belief that it will relieve a tax-ridden people, and once more raise the drooping head of many a worthy, enterprising and industrious man long bowed down in sorrow and care under the killing weight of the incubus of misrule. I believe that under its influence the sun of prosperity will once more dawn upon that benighted city—that smiles will sit upon faces where sadness is now painted and deep and heartfelt curses will be turned to joyous laughter. It is my best effort—and I can do no more for my constituents. Nor is it mine alone. The bill is replete with many wise provisions, which are the suggestions of the colleagues, Messrs. Mahoney and Flint. It has been carefully matured and subjected to the revision of some of the ablest lawyers, and most expert financiers of California. It is the production of days and weeks of toil, and honest study—and my colleagues and myself respectfully submit it to the Senate as our joint production—in the welfare of which we feel an equal interest and for the policy of which we are equally responsible, collectively and individually.

"Pass this bill, sir, and like a tree lopped of its useless dying branches which but serve to draw from it its vitality, prosperity will once more spring up in the city of San Francisco."

Bancroft in his "History of the United States," Vol. XXXII, at pages 644–45, speaking of the momentous election of November 4, 1856, in San Francisco, which resulted in victory for the movement behind the San Francisco Vigilance Committee, says:

"The election of the 4th of November, so far as San Francisco County was concerned, resulted in the victory of the people over the professional politician. The fact that Buchanan, democrat, received the largest number of votes for president, while the congressmen and state and city officers elected were republicans, people's reform candidates, and vigilants, shows that while a majority of the citizens favored the democratic party, they were, by the late trials which they had undergone, sufficiently divorced from party to cast their votes on the side of purgation and purity.

"Already was now in force in San Francisco the consolidation act, devised by Horace Hawes, by means of which the city and county were united under one government with reduced legislative powers, and with taxes, which might be levied for each specific object, limited. This act required a strict severalization of the public fund, and prohibited, at any time, drawing or borrowing from one fund moneys to be employed for the benefit of another fund. All officers of the government were brought down to strict economy and accountability.

"Its origin was that same dissatisfaction, arising from long continued indifference, neglect, not to say rascality and criminality in public affairs, which called into being the Vigilance Committee; and although drawn by a mind regarded by some as bordering on insanity, and passed by a legislature little loving San Francisco, it was a most wise and practicable measure for thriftless, peculative times.

"Some said that to this act rather than to the people's party San Francisco was indebted for her subsequent good behavior; but this is hardly true. Laws are of little avail when the people are not with them, as we have seen. Besides, Sacramento had her Vigilance Committee and her economic charter, but neglecting to put good men in office, her finances and morals were comparatively little improved thereby."

And in Volume XVIII of said history, at page 768, again speaking of the final triumph of the Vigilance Committee, Bancroft says:

"The assassination on May 14, 1856, of J. King of William, who in the *Bulletin* had undertaken to expose official corruption, gave the decisive impulse. The people rose almost *en masse* to avenge their champion. A vigilance committee formed again to supervise and purify the city, especially the political and judicial administration, chiefly by driving forth the miscreants through whom politicians carried out their election trickery, by calling upon the people to nominate candidates of high character, and by guarding the ballot-box from fraud. So effectively was this task performed, that after a vigilance session of three months, San Francisco stood transformed from among the most corrupt and insecure towns in the Union to one which within a year came to be lauded as a model for wise and economic government.

"The reform secured a sound basis in the Consolidation Act, the chief aim of which was municipal retrenchment by merging the double city and county governments into one, and reducing the pay and fees as well as number of officials."

And at page 771, in speaking of the Consolidation Act Bancroft describes how Mr. Hawes, who introduced the Bill, had once been a prefect of San Francisco County and how he was "mobbed by partisans of disappointed plunderers."

Hittell, in his history of San Francisco, speaking of the new administration elected at the first City election held after the organization of the Vigilance Committee, says, at page 263:

> "The new administration was a marvel of economy. The expenses of the city and county had been two millions six hundred and forty-six thousand dollars in 1855, and in 1857 they were only three hundred and fifty-three thousand dollars. Much of this saving was due to the consolidation act adopted by the legislature in April, 1856; but a large part of it to the new officials."

We see then, that, primarily, the cry for consolidation was to reduce the cost of supporting two sets of officers, one for the City, and one for the County, with the attendant waste following in the wake of such a form of government. We find this point again discussed in the constitutional convention of 1878–79.

When the section of our State Constitution providing for freeholders municipal charters was under debate in the constitutional convention of 1878–79, Judge Hager, Chairman of the Committee on Municipal Corporations, said of this section (Section 8, Article XI, then Section 9) as quoted in *Martin* v. *Election Commissioners*, 126 Cal. at pages 409–10 (Debates of the Constitutional Convention, p. 1059)—

> " 'This applies strictly and only to the city and county of San Francisco.' (The section originally required a population of more than one hundred thousand to entitle the inhabitants of such city to frame such a charter.) He further said: 'I cannot see that any evil will come from it; we have this peculiar government there, a consolidated city and county government. I do not agree with my friend from Sacramento, that the tendency is to multiply offices. The tendency is to reduce the number of offices. Instead of having a set of city officers and a set of county officers, they are consolidated. We have a sheriff who is the sheriff of the county and of the city. . . . We have a tax collector, and we have an auditor that acts for both; formerly we had one for each. The tendency of a consolidated government is to reduce the officers from two to one in every sense, and reduce the expense in every particular, and not, as the gentleman said, for the purpose of multiplying offices.' "

We can easily understand the cost of this duplication of officers by noting the officers existing under the City, and under the County, governments.

The Act of 1850 which created the City government, provided for the following City officers:

Mayor; Recorder; Board of Aldermen; Board of Assistant Aldermen, which two boards were styled "Common Council"; Treasurer; Comptroller; Street Commissioners; Collector of City Taxes; City Marshal; City Attorney and two Assessors for each City ward. And the County officers in San Francisco included a District Attorney; County Clerk; County Attorney; County Surveyor; Sheriff; Recorder; Assessor; Coroner; Treasurer; Public Administrator, and the County Board of Supervisors.

It is thus apparent that by the Consolidation Act unnecessary duplication of officers was at once done away with in the cases of the Recorder, the legislative body of the City and County, the Treasurer, the City Attorney, and the Assessor, among other officers.

It might be here said that there is an apparently unnecessary duplication of work at the present time in San Francisco, in the work done by the Sheriff's office and the police department. If a man is charged with the crime of grand larceny, he is arrested by a police officer. He is imprisoned in the City prison, under charge of the police department. If held for trial by the committing magistrate, he is turned over to the Sheriff, and confined in the County Jail, under the charge of the Sheriff. If convicted, and sentenced to the State Penitentiary, he is taken to that institution under charge of the Sheriff.

San Francisco, then, under the Consolidation Act, as now under the Freeholders' Charter, was a government which at one and the same time was a City and a County. In some respects it acts as a city—in others, as a county. This nature of our government which is peculiar to a consolidated City and County, cannot be better expressed than it has been described by the Supreme Court of California in the case of *Kahn* v. *Sutro*, 114 Cal., 316, decided while the old Consolidation Act was still operative.

The Court says:

> "While the corporate name of this body politic is the city and county of San Francisco, it is recognized by the constitution as having the attributes of both a city and a county, and also as having attributes as distinguishing it from either. Geographically it is one of the legal subdivisions of the State, and in that respect is recognized in section 1 of article XI of the constitution, as one of the counties of the State. Politically it is regarded in that instrument as a municipal corporation."

And again,

"But, while the people of San Francisco are thus to be regarded as under a municipal government, with the right to select officers to execute the powers of that government according to the terms of its charter, the territory over which that government is exercised is at the same time a county, and for those purposes for which county officers exercise authority, not derived from the charter and disconnected with municipal government, its officers are properly termed county officers. Considered in its political and judicial relations to other portions of the state, the officers elected by its voters, to the extent that they exercise only such powers as are given by laws relating merely to counties and who do not derive any of their authority from the charter, are to be regarded as county officers, as distinguished from city officers."

And the Court goes on to say:

"San Francisco is, therefore, both a city and a county, and, although the boundaries of the two bodies corporate are coincident, the electors within this territory vote for officers whose authority and functions are derived exclusively from the charter of the city, and also for officers whose powers and duties are prescribed by general laws, and upon which the charter is silent. It must follow from this that some of its officers are city officers and others are county officers. There is nothing unusual or inconsistent in this. The "government" of the city is municipal, and the officers who are to exercise that government are municipal officers, but the territory in which that government is exercised is still a part of the state, and for all purposes other than municipal government, is subject to its control, with the right on the part of the state to authorize the election therein of such officers as may be required to execute its general laws, or to perform such functions disconnected with the municipal government, as may pertain to the government of the state."

Illustrating this distinction between City officers and County officers, the Court held that the following were municipal rather than county officers: The Mayor; the City and County Attorney; Superintendent of Public Streets, Highways and Squares; School Directors; Treasurer; Auditor; Tax Collector; Surveyor, and Board of Supervisors. And that the following were County officers; District Attorney; Sheriff; County Clerk; County Recorder; Coroner; Public Administrator; Assessor and Superintendent of Schools.

It was therefore held that the terms of office of the municipal officers would be, under the San Francisco Consolidation Act, two years, while that of the County officers would be, under the general County Government Act, four years. However, since this decision, the State Constitution has been amended, as we saw above, permitting the Charter of a consolidated City and County to fix the terms of County officers.

Of the officials named by our Supreme Court as existing under the Consolidation Act, the following are retained under the freeholders' charter, and are now, as then, municipal officers, the Mayor, the City and County Attorney, now more properly named the City Attorney, the School Directors, Treasurer, Auditor, Tax Collector, and Board of Supervisors. The Superintendent of Public Streets, Highways and Squares has been superseded by the Board of Public Works, a municipal board appointed by the Mayor. The Surveyor has been superseded by the City Engineer, a municipal official appointed by the Board of Public Works.

All those officials named as county officers under the Consolidation Act are retained under the present Charter as County officers.

There is considerablee conomy gained in having a so-called "municipal officer" sometimes act in the capacity of a County official, or vice versa. For instance the Auditor, Tax Collector, and Board of Supervisors, municipal officers, often act, in their official capacity in purely County business. A good example of this is in the making up of the assessment roll for the levying of the state tax, in the collection of state taxes, and in the Supervisors acting as a County Board of Equalization. On the other hand, the District Attorney, a County officer, prosecutes for the violation of City Ordinances.

Aside from the economy gained from consolidation, the experience of San Francisco has shown that a most powerful weapon to secure local self control and freedom from interference by the State Legislature, is furnished by this consolidation of City and County government, when such a consolidated City and County is empowered to adopt a municipal freeholders' charter.

In the above case of *Kahn* v. *Sutro*, and in the more recent case decided by our Supreme Court, *Nicholl* v. *Koster*, Volume XXXIX, Cal. Dec., p. 263, it is pointed out very clearly that, so far as its capacity as a County is concerned, San Francisco is subject to control by the Legislature the same as other counties are, unless the Charter provides for County affairs. The result of the consolidation, in effect, has been to make the government of the County the same as the government of the City, or, in other words, the City has assumed and taken over the duties and obligations of a county of the state. Thus the City must maintain a District Attorney, a Recorder, a County Clerk and an Assessor, all of these being purely County officers. The mode and manner, however, of fulfilling this duty has been left to the City, and, therefore, the City has power to decide the manner and method of electing or appointing the necessary officers to fulfill these duties, and their compensation. The item of compensation is of the utmost importance, as the City is thus relieved of the general fee bills which are so likely to emanate from a State Legislature, fixing considerable expense on County treasuries.

The law of the State relating to election of County officers does not permit of a non-partisan election. By a charter provision, these County officers in San Francisco, however, are elected under a non-partisan election law. The salaries of these officers, the number of their deputies and the salaries of these deputies are likewise fixed by the Charter so that the City is completely divorced from the Legislature in the matter of the election, appointment, removal or fixing of the term of office of these county officers.

The Legislature, of course, can create additional county officers and make their salaries payable by the County Treasury, as was held in the case of *Nicholl* v. *Koster*, but it is *within the power* of the City to take over to itself the matter of determining the method, manner, compensation and term of office of these additional officials, by simply making provision therefor in the Charter.

The counties of the State are divided into classes according to population, each County of the State occupying a different class. The Legislature of the State, at every session, is continually passing new laws relating to the several County governments, providing for deputies of County officers and changing the compensation. Under the consolidation of the City and County the City of San Francisco is entirely free from legislation of this character. The net result of the consolidation is that the City and County of San Francisco is supreme in matters relating to its own government, being only required to fulfill the obligations that the general law of the State, as a matter of State necessity, imposes upon the counties. The method and manner of such fulfillment is left to the City and County to determine for itself.

It has been the experience of San Francisco that sometimes the provisions of the Charter on a given subject do not constitute as workable a scheme as the provisions of the general State law on the same subject matter, which would apply were the Charter silent. Thus, it was found that the San Francisco charter requirements of procedure for the improvement of streets were not nearly so satisfactory as some recent advanced legislation adopted by the State Legislature. A municipality should not, of course, be compelled to await amendments to the Charter if an already existing and satisfactory general law can be utilized.

To make possible such choice of alternative methods, in the case of the street improvement law above referred to, our Charter was recently amended, authorizing the Board of Supervisors, by an affirmative vote of not less than two-thirds of the members thereof, by Ordinance to substitute the method of procedure in any general state law now in force, or as the same may be amended, or that may hereafter be enacted, in place of the Charter procedure.

It would seem that some such general authorization to take advantage of improved general state legislation might well be incorporated in municipal charters, so long as proper precautions are taken against the fundamental charter securities being frittered away by any local legislative body which might feel inclined so to do.

With the right secured to the merged City and County, in its Charter, to avail itself of State laws where application of such State laws is practicable, a consolidated City and County government has commended itself to San Francisco as a simple and efficient form of municipality.

STATE POLITICAL REORGANIZATION

BY HERBERT CROLY
Cornish, New Hampshire

Among the many serious political and economic problems, with which the American democracy is confronted, there is none, in respect to which public opinion is more profoundly interested and more radically divided than in those connected with state political reorganization. More than ever before in the history of the country such problems are assuming national importance. The so-called progressive divisions of both parties are committed absolutely to the thoroughgoing alteration of state political institutions. They propose to substitute a more or less complete system of direct popular government for the more or less incomplete system of representative government, which prevailed throughout the nineteenth century. West of the Mississippi River one state after another has been adopting their program. Certain states in the Middle West and the East have begun or are preparing to follow the example. The advocates of the new system overflow with enthusiasm and optimistic conviction. The most completely reorganized state in the Far West is declared by one of its senators to possess the best system of popular government in the world to-day. He and his associates are expecting and planning to introduce the blessings of this superlatively excellent system of government, not only into the unregenerate states, but ultimately into the national political organization itself.

The opponents of the system of direct government are no less interested in it than are its friends, but they believe it to be superlatively bad rather than superlatively good. They class it as a political heresy, comparable to the economic heresies, which have so frequently appeared, flourished and decayed in the frontier states. It is condemned as revolutionary in its meaning and effect. It is supposed to undermine the very foundations of American constitutional representative democracy, and to violate all that is soundest and safest in the American political tradition. The system of direct government is expected to have its period of efflorescence, like Know-Nothingism, Grangerism, and Populism, and then gradually to sink into utter and deserved oblivion.

However much a disinterested student of American political institutions may disagree with the rhapsodies of the friends of direct government, he is not obliged to accept the strictures of its opponents. There is one imposing reason why it cannot be dismissed as a bit of temporary political insanity. Obviously it is only a new phase of a process of modifying American state political institutions, which has prevailed since the beginning of American political independence. If the experiments of the last four generations in state political reorganization have had any specific tendency and meaning, they have tended towards and meant the group of local political institutions advocated by the "Progressives." Some system of direct legislation and some attempt to fasten a more complete responsibility on legislative and administrative officials is unquestionably the partial consummation of a century and a quarter of state constitutional legislation. So much must be admitted, no matter how explicitly we reserve the question whether or not it be a consummation devoutly to be wished.

The process of American state political reorganization may be comprehensively described as the progressive limitation of the powers of the state legislatures. When the colonies declared their independence of Great Britain, the legislatures of three quarters of them were legally omnipotent, and the way in which the power was used immediately created distrust and dissatisfaction. The work of curbing them began by making them subject to written constitutions, consisting fundamentally of bills of rights, which required for their acceptance and amendment the direct approval of a larger or smaller majority of the voters. A little later their power was still further circumscribed by the adoption of the Federal Constitution. Participation in some of the most momentous functions of government was thereby denied to them, and their action was subject in certain respects to the jurisdiction of the Federal Courts. Moreover the Federal Constitution itself embodied a political theory of checks and balances, which was but imperfectly realized in the fundamental law of some of the states. After its adoption state constitutions were altered in order to conform to the national model. The lower house was, wherever necessary, checked by a smaller upper house elected for a longer term. The executive and the judiciary were little by little emancipated from legislative control and received their authority as a rule directly from the people. At about the same time a decision from the Supreme Court broadened the judicial veto over state legislation, and by so doing prepared for what was to become perhaps the most effective and disheartening of all limitations upon legislative power.

The foregoing checks upon the state legislatures were all introduced and developed by men who were suspicious of popular government; but the next enemy of the state legislatures proved to be the new American democracy. The Jacksonian Democrats in their attempt to make popular government effective dealt the legislature a body blow. They placed more confidence in the executive than in the legislature as the embodiment of the popular will. Under their influence the executive veto upon legislation was renewed and strengthened. The power of the legislative caucus over nominations was destroyed, and an attempt was made to secure an effective popular government by improving partizan machinery and by increasing partizan responsibility. The legislature began to take its orders from the partizan organization dominant in its state.

Neither the quality of legislative membership, nor the character of its output was improved by these accumulating prohibitions and checks. Political reformers, in no wise discouraged, continued patiently to tighten the bonds. If legislatures went wrong, an easy way of keeping them straight was to diminish the possibility of statutory aberration by increasing the scope of constitutional legislation. Constitutions began to increase in length. Many details formerly left to legislative discretion were specified in the fundamental law. The method whereby a legislature should deal with matters left to its discretion was prescribed. Special legislation was usually forbidden, and a more detailed definition of legislative procedure was imposed. In spite, however, of these attempts to take away with one hand a power which was given with the other, the legislative output began after the Civil War to increase with great rapidity and without any improvement in quality. In this emergency, another still more effective remedy was employed. In order to perfect a government by law, which was none the less a government in which laws and law-makers were presumptively suspect, the hitherto neglected power of the courts to declare laws null, was invoked and received an unprecedented development. The increasing detail of the state constitutions and the 14th amendment to the Federal Constitution had narrowed the path of constitutional rectitude. Along this path were stationed the judges, wielding a pen which was mightier than the sword. Within a few years the rocks below the legislative trail became ghastly white with the tatters of statutory vagrants. Nor was this all. As a last resort certain states, not content with the foregoing accumulation of automatic and personal supervision, threw up their hands and forbade their legislatures to meet more than once every two or four years and then for a strictly limited period. The earlier omnipotent legislature, the source in other countries of all regulation, had become the most completely regulated body in the community.

An alien and unsympathetic spectator of this process might well have imagined that the American states were possessed of a malady, which compelled them to vomit legislation, and which left them disgusted with the fruits of their own ailment. They had sought apparently in good faith to improve the quality of the legislative output by checking the legislature in every conceivable way, and by balancing legislative activity with the executive and judicial vetoes. They had succeeded so well in establishing a system of checks that the state legislative power became a sort of tread-mill, which continually went around at a considerable expense but which rarely went forward. As for the balance of the system, the less said about it the better. It may fairly be compared to the balance characteristic of a jelly fish or of a bed of clay.

During the past decade a decided change has taken place in the public attitude, not towards the state legislatures, but towards state legislation. The former disposition to prevent special and undesirable legislation has been superseded by a disposition to use legislation for the sake of effecting certain desirable economic and social reforms. In many states these reforms have been accomplished by the agency of the despised legislatures; but the checks which have been imposed on legislative action, and the continued subjection of many legislatures to the party machines and to the "special interests," immediately created a demand for some quicker and more certain machinery of accomplishing the popular will. There was an obvious way of creating such a machinery, which harmonized with the spirit of four generations of state political reorganization. The one positive element in the whole process of reorganization had been the gradual increase of direct popular legislation by virtue of constitutional enactments. The reforms which the legislatures either could not, or could not be trusted to, accomplish must be authorized by direct popular vote, the result being a virtual abolition of the distinction in certain states between statutes and constitutional laws. Such direct legislation would not be subject either to state constitutional prohibitions or to executive and judicial vetoes. The popular will would receive immediate and authentic expression—subject only to the checks imposed by the Federal Constitution and Courts.

Thus the system of prohibitions imposed upon state legislation by four generations of experiment are being swept away, while at the same time the new legislative machinery is unquestionably a partial consummation of the system it is destroying. The only possible result of the systematic degradation of American legislatures was their supersession, as soon as there appeared an emphatic demand for legislation in the popular interest. The people of the western states may be making a mistake in seeking to substitute direct for delegated government; but if so they are making a mistake in good company. They have been taught to consider their legislatures as necessarily corrupt and incompetent; and they are merely acting upon the lesson.

The element in American legal and political opinion, which condemns most emphatically the system of direct legislation is on the whole the same element, which in the past has done most to undermine legislative authority. The attempt to improve state legislatures and legislation by an elaborate system of checks, culminating in the judicial veto, has been on the whole the work of the American lawyer, who has wanted to set up a government by law and to do away with a government by men, and who proposed to make some kind of legal machinery instead of any body of men, judges excepted, responsible for good government. But their machinery was necessarily constitutional; and the ultimate makers of constitutional law in a democracy are not the judges but the people. When the people upon which their whole system rested began to move in a body, their superstructure of checks and balances crumbled to the ground; and except for the ruins there promises to be nothing left to hinder the unrestrained movement of the popular will.

Such being the general situation the attitude now assumed by the most irreconcilable opponents of direct government is the height of futility. How can they expect to prevent the spread of direct government by "standing-pat," by denunciations of the dangers of legislative "Populism" and by praise of the virtues of representative government. "The essential property of representative government," says Professor Dicey "is to produce co-incidence between the wishes of the Sovereign and the wishes of the subject." In this sense American state legislatures have never been considered representative by public opinion, and up to within ten years the better American lawyers were precisely the men, who testified most emphatically to the unrepresentative character of American state representation. If they wish to preserve representative government in the American states, they must devise some means of making it representative. They must advance some alternative remedy for the maladies of American legislative practice and behavior.

So far as I know the opponents of direct government have never attempted to propose an alternative remedy. They are tending to assume the position, in defiance of the historical attitude of their forbears, that American state legislatures have after all really been representative. They have represented, it is said, the amount of intelligent discrimination and disinterested public spirit, which the average voter has brought to the election of legislative candidates and to the consideration of state policies. Special interests have prevailed in American state government, because they prevail in the life and purposes of the average voter. They will continue to prevail under any system of direct government, unless the state electorates exhibit more public spirit and intelligent discrimination than they have in the past; and if any such access of conscientious and intelligent voting occurs, it would obtain by means of a representative system a more complete expression than it would from any system of direct government.

Such a retort has some validity. Throughout the nineteenth century economic conditions in the United States encouraged the confusion of public and private interest. The whole country was straining towards the quickest possible agricultural and industrial expansion. The public interest, to be promoted by economic expansion, was conceived merely as a collection of individual and class interests. The dominant object of state legislation as the expression of the public interest was the satisfaction of these eager individual and class interests. They were either given a free hand or they were directly or indirectly subsidized. Not unnaturally they took advantage of their opportunities to govern the states unscrupulously and sometimes corruptly for their own benefit; and they were aided rather than hindered in so doing by the means ostensibly adopted to check them. The accumulating array of prohibitions, safeguards and divisions of authority and responsibility, which passed for American state government was admirably adapted to the cultivation of special political and economic interests and to the suppression of any but a very aggressive public interest.

Be it admitted that pioneer economic conditions account for a certain part of the American legislative malady. There remains the equally persistent disgust which the results of this malady inspired. The state electorates have had aspirations as well as interests. They were vaguely conscious of a public interest, which was something more than and different from a mere collection of private and special interests. They supported the attempts made by constitutional reformers to give expression to the public interest by tying the hands of their perverted legislatures and by enlarging the constitutions; and if they are now taking the law into their own hands, it is not because they did not give to the other systems a fair trial. For generations they accepted the advice of the leaders, who sought to perfect a government by law, which would work automatically and dispense with any but a minimum of popular and individual responsibility. They did not reject it until its bankruptcy was notorious; and they cannot be blamed either for rejecting it now or for seizing in their reaction against it on the one engine it contained for the unhampered expression of the popular will.

The salutary aspect of the agitation in favor of direct legislation consists in its readiness to trust somebody with effective political responsibility. The old system trusted nobody. It deprived the executive of specially executive responsibility and failed sufficiently to recognize the necessarily close relation between administrative and legislative functions. The legislature was incarcerated in a straight-jacket, and was allowed a little occasional exercise only with the consent of the executive and the courts. The judges were partly incapacitated for their primary business of administering justice in order that they might be aggrandized as guardians of the constitution. Executives, legislatures and courts were all granted abundant power to prevent others from doing things, and very little to do anything themselves. But the root of the whole system was distrust of the people. The effective political expression of the popular will was delayed, diverted, checked, distrusted and discouraged in every possible way; so that just as soon as the state electorates came to have a united and aggressive purpose their natural instinct was to turn and rend their bonds. The watchword of the "Progressives," has become "trust in the people" and such a trust constitutes manifestly the only possible foundation on which a democracy can erect an enduring superstructure of political institutions.

The new state democracies are merely taking up the work, which was begun over eighty years ago by the Jacksonian Democracy and left unfinished. The pioneer democracy sought to create popular political institutions by means of manhood suffrage, the direct accountability of all officials to the electorate, and the substitution for the leadership of a legislative caucus the leadership of a partizan machine. It succeeded in carrying through its immediate program, but its program failed to effect its ostensible objects. The new democracy is resuming the task, but not at the point at which the old democracy ceased. It seeks to undo in certain respects the work of its predecessor. It proposes to break up the system of party representation, leadership, and responsibility upon which the old democracy counted for the transaction of public business. It proposes, furthermore, to treat the legislative power very much as the old democracy treated the executive power. It proposes, that is, to take over the power of making important laws just as it formerly decided to take over the power of selecting all important officials. And just as it formerly assumed the power of selecting all important officials partly with the idea of strengthening the executive, so it is now assuming the power of making laws with the very evident intention and expectation of strengthening legislation.

Certain of the leaders of the new democracy admit, however, that their predecessors made a mistake in attempting to strengthen the executive by subdividing it and making its parts more directly responsible to the people. Effective executive responsibility was diminished rather than increased by this device; and the partizan responsibility, which was substituted for official responsibility, while partly effective in national politics, was entirely ineffective in state politics. But is not the new democracy in its attempt to strengthen legislation making a mistake analogous to that which the old democracy made in its treatment of the executive? The subdivision of the executive power diminished administrative responsibility, because the accountability of a large number of elected officials to their constituents could not in practice be enforced. The leaders of the new democracy, who are converted to a shorter ballot, should consider seriously whether the tendency of an unlimited initiative and referendum will not be to bring about a similar disintegration of the legislative power and in the end a similar laxity in its exercise.

The initiative is intended to give free expression to the interests and ideas of small popular groups, which in the past have not been able to obtain a fair hearing. Its effect in Oregon has been to submit to the electorate a great diversity of legislative proposals, for which public opinion may or may not be prepared and which may or may not receive any sufficient preliminary ventilation and discussion. These proposals may be and often are introduced by groups of individuals, who occupy no intimate or responsible relation to the state administration or to the whole body of state public opinion. They merely want to push their own ideas or advance their own interests. The electors are required to accept or reject these proposals just as they stand; and the experience of Switzerland as well as Oregon indicates that the great majority of them are no more favorably received by the voters than they would be by a legislature. It is improbable that any reform has been accomplished by means of the initiative and referendum, which might not have been accomplished as well by some other means. In Switzerland direct government has frequently made slower and more difficult the enactment of desirable legislation. The voter is confused and made suspicious by being bombarded with a succession of radical or unfamiliar proposals; and in his confusion and impatience he usually votes "No." The conditions under which he could pass a wilful and intelligent judgment are in the majority of cases denied to him. In order to obtain such a judgment the utmost concentration of public attention and interest on a few salient proposals is necessary, just as a similar concentration of interest on a few salient ballots is a condition of a wise choice among alternative candidates for office.

In view of its practical inconveniences the unlimited initiative and referendum, in the form which it has obtained in the majority of "Progressive" states, is scarcely likely to endure. Obviously the cycle of transformation in state political institutions, of which direct government is the latest phase, has not been completed. A system of direct government is being experimentally superposed upon a system of misrepresentative government; and as yet neither the old nor the new system has been adapted to its proper functions and to its necessary relations to the other members of the governmental family. Responsibility for good government has been placed where it ultimately belongs, but it has not yet been provided with institutions, which permit of its effective redemption. Even those who believe that Oregon possesses the best government in the world today must regard with some misgivings the lingering remnants of the former misrepresentative system. All accounts agree that the mutilated legislature is performing very badly what remains of its work. It seems incapable of drawing properly the appropriation bills required for the ordinary transaction of state business. Under the circumstances the further deterioration of the legislature is most probable. Why any self-respecting man or useful public servant should want to be an official legislator in a state like Oregon is unimaginable. One of two results is likely to follow. Either the legislature in directly governed states will disappear, as it has disappeared in directly governed cities, and be merged with some kind of executive council. Or if it is to be kept alive, it must be granted as in Switzerland a limited but effective power, to which a definite responsibility is attached; and some means must be taken to make it more representative of the diverse currents of popular opinion.

The impossible position of the legislative rump in a directly governed state is practically admitted by the People's Power League of Oregon, which has proposed certain additional constitutional changes designed to strengthen both the legislature and the executive. These proposals look in the direction of a more complete concentration of organized public power and consequently in the renewal to that extent of representative government. Any further modification of state political institutions must, indeed, look in some such direction. The process of distribution has been pushed to the limit. Any additional advance along that line would mean utter disorganization. The people have resumed their ultimate responsibility and most of the actual power. They are after a fashion really governing themselves; but in order to govern themselves they have to govern one another, and they have to provide some more effective machinery for that purpose.

Special interests have usually predominated in American state governments, because their constitutions have not provided for the expression of a public interest which was more than a collection of private and local interests. There has been no integrity of government, because there has been no sufficient unity of organization. The American state as a political type needs a particularly unified organization, because its citizens are never forced into joint action by the pressure of external dangers or by the necessity of asserting a collective interest in foreign affairs. The Federal Constitution protects them even against the worst consequences of internal disorder. Yet the organization of the American state has hampered in every possible way the expression of any prevailing collective public interest. In neither branch of the legislature has an attempt been made to secure the representation of any interests except local interests. The executive has been never granted its proper and natural function of giving effective expression to the will of the temporarily preponderant weight of public opinion. A governor could suggest legislation and he could usually veto it. In the case of an able and aggressive man, supported by a voluminous wave of public opinion, his power counted for much. But in forcing through a legislative program, he is straining his legal authority; and in order to hold his own as the political leader of the state he is obliged to dissipate his time and energy in constant warfare with the political machines whose domination he is necessarily destroying. In case the state governments are to be consolidated, the executive as the head of the responsible administrative system and as the representative of the dominant mass of public opinion, necessarily becomes the center of the consolidated organization.

The progressive democracy is bound to be as much interested in efficient administration as it is in reconstructive legislation. "Progressive" legislation in all the states is leaving behind it a trail of public service commissions, conservation commissions and the like, and upon the excellence of their work the success of the progressive movement will to a very considerable extent depend. Its future as the expression of a permanent public interest is tied absolutely to an increase of executive authority and responsibility. It cannot get along without an adequate and efficient administrative organization—responsible to the governor, just as the governor is responsible to his constituents. And the administration itself cannot properly carry on its work, unless it is provided with some means of calling sharply to the attention of public opinion its requirements in the way of revised or supplementary legislation.

The practical political career of the new democracy and the logic of its legislative program both point in the direction of bestowing on the governor legislative initiative. His inevitable responsibilities to public opinion and to the business of government are such that his relation to legislation should become positive. He should have the power to introduce and advocate bills, which under the circumstances would necessarily be drawn with a lively sense of his responsibility to public opinion and to the needs of effective administration. These bills the legislature would have the power to accept or reject. But the veto power, possessed by the legislature would have a positive value, because it would, of course, be united with the power of amendment. The legislature's proper functions discussing testing and tempering legislation, would not only remain unimpaired, but would even be strengthened. Assuming it to be a body really representing the diverse opinions and interests of the electorate, it would have every disposition to criticize sharply and, if possible, to modify the administrative measures. The executive and the legislature would remain separate, but provision would be made for their mutual association and for the performance by each of its proper and suitable work. Of course the legislature might frequently either reject administration bills or amend them in unacceptable ways; and in the event of such disagreements an appeal to the people would constitute the natural remedy. Bills submitted to popular vote as the result of a disagreement between the legislature and the governor would be likely to present a definite issue, which would be fully discussed, concentrate popular attention, and evoke the best results from the referendum.

One of the most doubtful questions, raised by any such increase of executive powers, would hang upon the difficulty of obtaining a legislature, which would want to criticize and test the administrative bills. Would not the preponderant element in public opinion which elected the governor provide him with the necessary convenience of a subservient legislative majority? It most assuredly would, unless adequate measures were taken to make the legislature represent, not public opinion as a whole, but public opinion in so far as it was divided by special interests and ideas into a group of minorities. The will of a temporary majority usually arouses the hostility of several minority interests in the community. Indeed, just in so far as the majority is one-sided, unfair or extreme, it is certain to arouse such opposition: and if any machinery can be created by securing the representation of such minorities the program of the governor would be sure to meet with the needed resistance. Such a machinery could be created by the adoption of a system of proportional representation. Let the state be separated into large but unequal districts, corresponding so far as possible with its salient economic subdivisions, and varying in the number of their representatives according to their population. Let the names of those representatives appear on the ballot without any partizan designation, and let them be chosen by means of the system known as the single transferable vote, which serves to secure the representation of minorities in proportion to their actual voting strength. In all probability such a machinery would create a legislative body with both the disposition and the ability to criticize effectively an administrative legislative program.

But what would become under the foregoing system of the popular initiative, referendum and the recall? They would all have a certain place. An executive possessed of such very considerable powers and elected as he should be for a comparatively long term, should most assuredly be subject to recall. He should be obliged to keep the confidence of the electorate just as the English ministry is obliged to retain the confidence of the House of Commons. The referendum would be frequently invoked as the result of resistance by the legislature to the governor's program, and it could be furthermore made obligatory on certain classes of measures. A popular initiative in legislative proposals might be preserved, provided it was so limited as not to make the ballot of legislation too long or too trivial. If it could hold its own against the official initiative in legislation of a governor, representative of public opinion and the state administration, it would deserve whatever effectiveness it could retain. The people would not try to perform all the functions of government, but they would perform certain essential ones and they would absolutely control the remainder. They could not be betrayed—except with their own explicit, well-considered and reiterated consent.

No doubt a plan of state political reorganization framed along the foregoing lines has just at present no chance of securing effective popular support. It is subversive of some of the most time-honored of American political traditions, and it would excite as much opposition among the opponents of direct government as it would among the friends thereof. Public opinion in a democracy cannot assimilate too many new ideas at one time. For the present it is being fascinated by the notion of the popular exercise of legislative power; and before any consolidation of public authority can be brought about, the agitation in favor of direct government in its popular form must run its course and learn its lessons. The most that can be urged in favor of the availability of the general type of state political organization, which has just been sketched, is that it seeks to meet certain fundamental political needs, which have hitherto been largely ignored in our state political institutions, and which hereafter are bound to become more rather than less acute. Finally these needs are met in a manner which enables the popular will to be freely, efficiently and at the same time considerately expressed.

The prediction may be confidently advanced that eventually the need of consolidation in our own state political institutions will have to be faced. But the attempt to meet it will probably make very slow headway. An American electorate usually jumps at the opportunity of casting more votes, but it is loth either to believe that more votes do not mean more power or to surrender any vote, which it has once obtained. The reconstruction of a system of really representative government will never be accomplished, except by virtue of leadership very different from that which now characterizes the progressive democracy. Some of the most conspicuous of its leaders contrast direct with delegated government as if the two were necessarily opposed;

and one of the most conspicuous has worked up a preposterous theory that all representative government must be selfish and corrupt and all direct popular government disinterested and public spirited. This kind of leadership will never advocate any reform which does not tickle a popular prejudice, or against which a plausible popular outcry can be raised. It answers any expressed misgiving as the power of a popular vote to accomplish every worthy and necessary political object with the retort that the doubter does not trust the people. And it considers trust in a popular majority and in the average voter tantamount to an utter distrust in all minorities and in all exceptional individuals. Under captains of this kind the progressive democracy may win a great many elections; but they will contribute about as much to the beneficial reorganization of state political institutions and to the solution of the problems of the American people as did in its day the Jacksonian democracy. They will contribute institutions which in the name of democracy will dissipate and discredit popular rule, and which will become eventually the great obstacles to any genuine social and economic amelioration.

REMARKS ON MR. HERBERT CROLY'S PAPER ON "STATE POLITICAL REORGANIZATION"

BY W. S. U'REN

Oregon City, Oregon

From my view point there is very little of criticism or comment to offer on Professor Croly's article. I am in sympathy with most of his views. But is it quite fair to criticise voters who have had the power of direct legislation during only four elections because they have not already provided their state with good government, or even with "institutions which permit" good government? The people of Oregon have done some things for themselves within the past nine years of which he seems not to have heard.

For example, Professer Croly cannot imagine, "Why any self-respecting man or useful public servant should want to be an official legislator in a state like Oregon." But if he is willing to be a member of the legislature at all there are the following reasons at least why he would rather be a member of the legislature in a state like Oregon than in any state not like Oregon, New York or Illinois for example:

In the legislature of Oregon he will not be offered a bribe to vote for or against any bill; he will not be offered payment to vote for any candidate for United States senator; he will not be invited to make his headquarters at any "House of Mirth" while he is attending the legislature; he will be very sure that no party boss or corporation lawyer is controlling the vote of his fellow members; he will not be offered any railroad passes or corporation favors.

When he goes home his neighbors will not suspect that he sold them out in the legislature. They may not think he is one of the wise men of the Nation or that he was a successful member. But they will believe that he comes back from the legislature at least as honest and honorable as he went. None of these things can be said of the members of the legislature of New York, Illinois, or any other American state where the people have not the Initiative and Referendum, and in substance the Statement No. 1 plan of selecting United States senators.

All these things have been accomplished in Oregon for members of the legislature by the use of the Initiative and Referendum. Effort was made to secure every one of these measures from the legislature of Oregon without the Initiative. In every case the law was denied and refused by the legislature.

As to the excellence of Oregon's government, or the Oregon plan, as compared with other governments, I am not inclined to argue. It may be freely admitted, without reservation or qualification, that this is the best on earth, and still be saying very little for the Oregon plan. It is the business of government to promote the physical and mental welfare of all its citizens. Citizens are the chief and most valuable product of government. The success of any government is to be judged by the poorest, least efficient and least useful able bodied citizen it produces, in comparison with what that citizen might have been worth to the state and to himself if he had been given every possible advantage by the state.

A government is entitled to be called good, better, or best, in proportion to its success in obtaining the following results:

That no child shall toil beyond its years and strength;

That no child shall ever be hungry or cold for want of food, clothing or shelter;

That no adult shall fail of his or her highest mental development for want of educational and training facilities, with time to use them, which the state might have provided;

That no citizen shall ever suffer involuntary disemployment for so much as one day (That any man should have to hunt a job is high treason by the government against the man.);

That jobs at good wages shall always be seeking men and women;

That every citizen shall get all he earns, and earn all he gets;

That no public officer shall ever fail to protect the weak from the strong, the ignorant from the cunning, or the innocent from the vicious, so far as it is possible within the law for an officer to afford that protection;

That no public officer shall ever make terms for the protection of vice, whether organized and capitalized or not, in the robbery and destruction of the citizen for the profit of the capitalists and the public officers; it must be so organized that it shall always obtain the highest degree of efficiency in all its departments and at least 100 cents of value in public service for every dollar of money that is collected from the tax payers.

The best that can fairly be said of any government which does not obtain these results is, that it is not so bad as other governments, or that it is not so bad as it might be.

None of these things have yet been accomplished in Oregon, but it is only nine years that the people have had the lawmaking power. Some other governments are nearer success than Oregon though I do not think that is true of any American state. The foregoing objects of government can be secured in a very great degree by any people who have in their hands the powers of lawmaking now possessed by the people of Oregon. Success depends wholly upon the wisdom, patience and unselfish devotion of the voters to their duty as citizens. A host of the citizens of this state believe the people of Oregon will use the Initiative, the Referendum and the recall so wisely and so well, that so far as these things can be accomplished under the limited powers of an American state government, they will be accomplished within another ten years in Oregon.

But the Initiative seems to be absolutely necessary as a means of submitting revolutionary changes to the people. And it is by these changes that the Oregon leaders of the new democracy expect to bring about a practical and automatic limitation of the use of the Initiative and Referendum. These men expect the people will adopt a system of proportional representation in elections that will secure fair and complete representation in the legislature of all the citizens; that the members of the legislature will be chosen from the aristocracy of integrity and intellect of every class; that the members will be men learned in the science of government; that their terms of office will be long enough for them to acquire practical skill in the art of lawmaking; that the legislature will be so completely representative of all the political opinions of the state, as to insure for every political and economic idea that may be offered, the fullest and fairest possible examination and hearing.

Also, that the governor will be elected by a majority of all the voters instead of a mere plurality, and that he will be a legislative leader as well as governor. Then we shall know what party is governing Oregon. We do not now. No one does, any more than any one knows what political party is governing the United States.

Then Oregon will have one of the short ballots of the world.

When these things are done there will be representative government in Oregon and the Initiative and Referendum will be kept and used only for emergencies. There is no representative government in the United States now. There never has been. A majority of the representatives in Congress are often elected by less than one half of the voters. It is almost impossible for any third party to elect one representative, much less a United States senator. It always was. Has Labor, organized or otherwise, ever elected under its own party name any representative or senator in Congress? There are many Labor representatives in the British Parliament, but whoever heard of one in the American Congress? Surely no one will claim that the American system is truly representative when Labor has no member of the body.

It may be, as Professor Croly says, that the same results thus far achieved by the Initiative and Referendum might have been obtained as well or better by some other method. But is that important, even if it is true? The fact is that no such results were obtained in any American state by other methods, until the way had been staked out by use of the Initiative. Certainly it is not desirable that the Initiative shall be relied on as the principal and ordinary method of making laws. It will not be. But at present it seems to be the best means available for overthrowing government by plutocracy in the American states and cities and substituting Peoples' Power government. I do not think Senator Bourne or any other of the Oregon leaders ever thought of the Initiative and Referendum as anything but a means to an end, and that end is a government in all its departments, national, state and local by the Peoples' Power.

An Oregonian's language does not always leave a perfectly clear impression that he thinks of the Initiative and Referendum only as a means to an end, because he often thinks of the political evils from which the people of the state have already delivered themselves by the vigorous use of direct legislation. So frequent and vigorous has been the use of these powers that it is not surprising for many Eastern people to think that Oregon is exceeding the speed limit.

REMARKS ON MR. HERBERT CROLY'S PAPER ON "STATE POLITICAL REORGANIZATION"

BY CHESTER H. ROWELL
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It is quite possible to accept absolutely the standpoint of Mr. Croly's paper, and yet to dissent from its principal conclusion. The standpoint is that of the evolutionist, who regards contemporary "progressive" policies not as finalities, but as transitional phenomena in the development of popular government. The conclusion is that these policies are nevertheless bound to acquire a certain relative finality, which will make them self-obstructive of their own purpose. And the answer is that the movement momentarily expressed in these policies is deeper than they are, and that its vitality can overcome their mechanical limitations.

Mr. Croly identifies the Progressive movement with the devices of direct popular government, which he says it proposes to substitute for representative government. He takes Oregon as the type and Senator Bourne's famous rhapsody as the gospel of the movement. He analyzes the natural evolution of direct government out of the failure of delegated government. The once omnipotent representative legislatures were limited first by those who distrusted the people, through constitutional checks and judicial aggressions, and then by the Jacksonian democracy, through executive and party aggrandizement. But the very constitutional limitation was itself operated by direct vote of the people. As representative legislation degenerated, this originally restraining device became by contrast the only moveable portion of the system, and was the ordinary resort when real law making was needed. Direct legislation under the guide of constitutional amendment transformed constitutions into codes of laws, and the more detailed they became, the more impossible it was to legislate by any other method. It was only a step from this subterfuge to the frank adoption of the initiative and referendum, and so modern direct legislation is an immediate development from the attempt to limit the old system. Whatever its defects, it is at least futile to oppose it by stubbornly adhering to a system already hopeless. And it has at least the virtue of entrusting somewhere the power necessary for governmental efficiency. The Jacksonian democracy had failed to accomplish this. It had concentrated power on the executive branch, but dissipated that power by dividing it among a multitude of independent officials separately elected. Its system of party responsibility also broke down in the states. The danger is suggested that the new Progressive democracy may fail in the same way, by dissipating legislative power. Popular government is no more attained by a multitude of referendums than by a multitude of elections. The legislature having now lost most of its few remaining functions must either acquire new ones or disappear. Mr. Croly would regenerate it with new functions, but he attributes to the Progressives a willingness to let it disappear. He suggests that by proportional voting the legislature may be made to represent the various minority oppositions, as the governor represents the dominant majority. Confer the legislative initiative on the governor and the power of veto and amendment on the legislature, with referendum when they disagree. But any such reconstruction is hopeless under the leadership of the present Progressives, who regard direct and delegated government as mutually exclusive, and distrust those minorities or exceptional individuals who are the necessary vanguard of progress. Such leadership may win elections, but it can not reconstruct institutions beyond the point where they will serve only to dissipate, discredit and obstruct popular rule.

This, briefly, is the analysis and the conclusion. Let us, instead, examine the concrete facts. And in doing this, we must deal first with the progressive movement as a movement, rather than merely with the so-called Progressive "policies."

However closely we may retrospectively identify the Progressive movement with direct legislation, there are few of the state movements outside of Oregon which began that way, and no others yet embody exclusively the Oregon type. Most of the movements have begun consciously as negative and destructive revolutions, and have moved on to constructive work only after the necessary destruction was finished. Evolution began in revolution. Wisconsin began with revolt against a political machine and went on to the regulation of corporations. The direct primary was an incidental weapon and direct legislation an afterthought. Illinois began by a fight against the Chicago traction monopoly. In Iowa the first revolt was again a tariff theory which ignored the consumer. In New York the beginning was the discovery of the insurance frauds, which led to a public service commission and miscellaneous reforms. In New Jersey it was the personal leadership of a general disgust. In Ohio it is revolt against boss rule and in Pennsylvania a longing for a government that will not steal. In New Hampshire and California it was revolution against railroad usurpation. Nationally, the movement emerged in President Roosevelt's crusade for the square deal administered by himself, and crystallized in the insurgent bolt on the tariff bill.

Superficially, then, the movement looks like a mass of miscellaneous reforms, held together not by direct legislation, which is treated as only one reform among others, but by a common revolt against a political machine dominated by special interests. Indeed, this was the first and is still the usual generalization in regard to the movement. The "muckrakers," who were its first heralds, even invented a nomenclature for this generalization. "The System," "Special privilege" and "Big Business" have acquired a technical jargon meaning now familiar to everybody. Even yet, most of the Progressive leaders go no further than this in their self-analysis. A common spirit or temperament more than any explicit common policy holds them together. And while the devices of direct government have spread by contagion until they are now practically a common slogan, there are few who propose to supersede representative government by them. If that supersession were to occur it would be by the inherent force of these policies and not by any conscious intent on the part of more than a few of their advocates. Most Progressives, in fact, do not yet realize that the failure of representative government was anything more than moral. They believe in representative government, and fondly hope to restore it by making the present system work honestly. They regard direct legislation as a mere corrective power, to be held in reserve, so as to force representative government to be representative, but to be seldom used. Experience will doubtless demonstrate to them that the problem is not so simple as this, but at least they are in a mood to seek a solution that will restore rather than destroy representative government. The exceptional situation in Oregon is generally attributed to the accidents of personal leadership. In general, the purpose of the Progressive movement is not direct government or delegated government, but popular government, by either device or both.

This analysis is purposely superficial, in order to meet the question of leadership, which is also superficial. Mr. Croly argues that because some of the Progressive leaders take a superficial view of the finality of direct legislation, they will fail of leadership beyond the limits of that view. The answer is that there is not one superficial view, but many, in sufficient variety to meet almost any concrete exigency of practical leadership. It is probably better for immediate leadership to be relatively superficial. Theodore Roosevelt would lose his chief usefulness if he were able to analyze himself from the perspective of the future historian. Jonathan Bourne is the better crusader for undelegated government because he believes it a panacea. It is enough for the captain to see straight ahead and for the general to grasp the military strategy. The philosophic analyst is not a good soldier. He reads papers before the Political Science Association, for the delectation of posterity.

It may therefore be earnestly maintained that both the policies and the leadership of the Progressive movement are sufficiently adaptable to meet the future, as well as the present, of the problem of state reconstruction. As an evolutionary force, the movement is all the better for feeling its way somewhat vaguely, one step at a time. If the governmental theories of our forefathers had been less clearly reasoned, we should not now be so hampered by the rigidity of the institutions they bequeathed us.

Neither the actual leaders of the Progressive movement nor their methods of accomplishment correspond to the simple type held up as a warning by Mr. Croly. Theodore Roosevelt is a temperamental Progressive and Governor Hughes and President Taft have at least accomplished certain Progressive results, but none of these at all resembles the type. Neither does Gifford Pichot, who is a Progressive both in temperament and in creed. Woodrow Wilson has the full academic complexity of view—perhaps too much of it. Senator La Follette may resemble the type in the belligerence of his political campaigns but as a responsible administrator and state party leader, he showed comprehensive and constructive statesmanship of the first rank. The reforms in Wisconsin were not accomplished by direct legislation, but by a campaign to make the legislature representative. In fact, with a final development of much the same governmental systems, the governmental experience of Wisconsin is almost exactly opposite to that of Oregon. The difference is one of leadership. Neither can be taken as exclusively typical.

The recent experience of California in transforming itself in a single leap from one of the most reactionary to perhaps the most Progressive of state governments is interesting and significant. The movement, up to the moment of actual victory, was one of pure revolt. It began in the determination of a few men to try by organized political action to depose the Southern Pacific from its domination of the state government. These men organized in 1907, as a faction of the dominant party, the Lincoln-Roosevelt Republican League, using as a nucleus certain local reform organizations. Their first platform consisted practically of a declaration of war on the railroad machine and a demand for a direct primary. They were swamped with appointed delegates in the state convention of 1908, but managed to elect enough members of the legislature of 1909 to obtain from it an imperfect direct primary law. They presented to the Republican primaries of 1910 a complete state and legislative ticket, headed by Hiram W. Johnson, now Governor of California. Their platform was still chiefly a declaration of war on the railroad machine, and Mr. Johnson, who traveled 18,000 miles by automobile in the campaign, proclaimed to the people of every cross-roads his personal platform in these words: "When I am Governor I am going to kick out of the government of California William F. Herrin and the Southern Pacific." The Johnson ticket carried the primaries and the League became the regular Republican party organization of the state. Then for the first time a comprehensive program of constructive policies was announced, in the name not of a faction, but of the party, as the regular Republican platform. That platform promised among other things to submit amendments providing for the initiative, referendum and recall, but was composed principally of definite legislative pledges. After the election, Meyer Lissner, chairman of the State Republican Committee, introduced a unique method of party responsibility. He called a meeting of the party committee, to which the members-elect of the legislature were invited, and announced that as party chairman he was not interested in the distribution of patronage, but was very much interested in the fulfillment of platform pledges. He therefore asked and received authorization to appoint committees, composed of members of the party organization, members of the legislature, and outside experts, to prepare and present to the legislature preliminary drafts of bills covering each of the platform pledges. Fortunately, the Democratic platform had contained practically the same pledges, and party lines were obliterated in the legislature. These bills were considered and in some cases radically revised by the legislature, but every one of them passed in some form, and, within four months of the day of election, the state of California presented the example of every pledge in a radically comprehensive party platform either already enacted into law or submitted to the people for ratification as a constitutional amendment. The amendments were all passed at a special election and an extra session of the legislature is now sitting to complete the necessary enabling legislation. Within a year of the incoming of the new administration, every party pledge will be actually operative in law. All this has been accomplished by the old forces of party responsibility and legislative action, without a single initiative or referendum vote except the reference of constitutional amendments already required by the old constitution. Even these would have been passed by the legislature, without referendum, if it had had jurisdiction to do so. In California, for once, political organization and personal leadership have made representative government both representative and efficient. The only place in which delegated government has been displaced is in the party nominations, which are of course by direct primary. But this only applies to nominations the method we have always used for elections. What reactions the future may have in store is of course unknown, but this is the record so far.

Both party platforms had favored a simplification of the primary law; the direct election of United States senators; the abolition of the "party circle" on the ballot and the non-partisan nomination of judges; the initiative, referendum and recall; simplified criminal procedure; non-partisanship in appointments; business administrative reforms; conservation legislation; the extension of the powers of the railroad commission; and a public service commission. The Republican platform, in addition, had called for a shorter ballot, county home rule, a workmen's compensation act, and the submission of a women suffrage amendment. Surely an ambitious program for a single session of the legislature less than three months in length! The history of its accomplishment is told in the "Story of the California Legislature of 1911" by Franklin Hichborn (San Francisco, the Jas. H. Barry Co.) a book which ought to be in the hands of every American student of political science.

While direct legislation is only one feature of this program of reforms, it must be conceded that it was the central feature, both in the legislature and in the campaign that followed. The opposition was concentrated on the demand that judges be excepted from the operation of the recall. Only the personal influence of Governor Johnson secured the necessary two-thirds' vote of both houses to submit the amendment without this exception, but when it came before the people it was carried by a majority so enormous as to amount practically to unanimous consent.

The session of the legislature was followed by what amounted practically to a referendum election, under the familiar guise of a series of constitutional amendments. The constitution of California is beyond all comparison the worst in the world. Adopted in 1879, in an era of distrust of legislatures, it was an elaborate code of laws to begin with, which has since been made over by thirty-two years of biennial amendments into almost inconceivable complexity. The presumption is always against the constitutionality of any act of the legislature, and the custom is to make sure by enacting it as a constitutional amendment instead. We have thus had the referendum in its worst form for thirty years, and even those who are temperamentally sceptical of direct legislation welcomed a rational referendum proposal, as the first step toward ending the irrational referendum now in operation.

There were twenty-three amendments, ranging from the most important to the most trivial. Not one of them was referred to the people in response to any petition from the people, and not over six or seven of them, aside from the initiative-referendum amendment itself, could conceivably have been the subjects of such a petition, even in the event of a legislature refusing to pass them. This particular legislature would have passed them all, if it had jurisdiction, and no one would have invoked the referendum against any of them. It was a compulsory referendum, then, imposed on the people by the rigidity of an ancient constitution. A simple constitution, with voluntary initiative and referendum, instead of swamping the people with direct legislation and superseding representative government, would have unshackled the legislature and relieved the people of the only burdensome part of the referendum they how have. In a very real sense, at least in California, the cure for too much referendum is more referendum.

An idea of the scope of the amendment election may be gained from a list of the subjects covered. They were, in the order on the ballot, (1) weights and measures; (2) county home rule; (3) divided session; (4) women suffrage; (5) logging railroads; (6) city charters; (7) initiative and referendum; (8) recall; (9) criminal appeals; (10) employer's liability; (11) civil service; (12) making railroad commission a public utilities' commission; (13) city charters; (14) municipal ownership;

(15) text books; (16) increasing railroad commission from three to five and making it appointive; (17) majority vote charters; (18) justices' courts; (19) passes; (20) making clerk of supreme court appointive; (21) making appellate judges impeachable; (22) exempting veterans from certain taxes; (23) increasing the powers of the railroad commission. The ballot was printed in such a way as to be unintelligible, and the printed arguments sent to the voters were beyond human power to read.

This was the referendum at its absolute worst. No hostile critic could have devised a more unfair test of the people, and no voluntary referendum could have thrown together such an unintelligible jumble. Neither would this or any other legislature have imposed such a burden, if it had any choice in the matter. But the people, nevertheless, did vote with surprising intelligence and discrimination. One minor railroad pass amendment was defeated; several other debatable minor amendments were passed by small majorities; the uncontested minor amendments received good majorities; and the great reforms were carried overwhelmingly. The largest two majorities were given to the two judicial amendments—the recall and the limitation of technicalities in criminal appeals. There is no subject on which the American people are so unanimous as in their repudiation of the traditional lawyer's view of these two questions.

By these amendments of course the government of the state is absolutely revolutionized. It now lacks of being completely democratic only two things—a short ballot and a short constitution—and the beginning has been made toward one of these. Governor Johnson in his message advocated shortening the state ballot to the federal model, by making all the executive officials appointive, and amendments proposing this received majorities in both houses, but failed in one or the other of the necessary two-thirds. The legislature did shorten the ballot to the extent of making the state printer appointive, and proposed constitutional amendments, which were passed, making the railroad commission appointive, and giving the supreme court the right to appoint its own clerk. But California still goes through the farce of electing its surveyor-general, to say nothing of other examples scarcely less absurd. And California, in adopting the new and rational voluntary referendum, has not yet abolished the old and irrational compulsory referendum. The moral credit of the legislature has been restored and the legislative career has become respectable and desirable. Several valuable state reputations were made at the last session. But the restoration of effective power to the legislature still awaits the simplification of the constitution. The first condition, however, of restoring that power, is now provided. Having their check in the legislature through the initiative, referendum and recall, and on the executive and judiciary through the recall, the people will no longer fear to remove the unworkable part of the constitutional checks. The ripening of sentiment for a simpler constitution is only a matter of a little education or experience. Unquestionably, just as the direct primary compels the short ballot, by its confessed unworkability under the long ballot, so direct legislation will compel the short constitution, by its demonstrated incompatibility with any other system. And even the imperfections of the direct legislation system are not, like those of the traditional constitutional system, self-perpetuating. It is flexible instead of rigid. If the new Progressives make a blunder analogous to that of the Jacksonian democrats, they will at least do it by a method which provides the mechanism of its own cure.

The two most radical features of the California reconstruction are women suffrage and the inclusion of judges in the recall. Women suffrage was not made specifically an administration measure, though Governor Johnson personally approved of it and many of the leaders in his campaign for direct legislation were also outspoken in support of the suffrage amendment. California is the first state of the rank and general social conditions of the great Eastern states to adopt equal suffrage. More women are now enfranchised in California than in all the other suffrage states combined. At the only important election held since the adoption of the amendment—the recent municipal election in Los Angeles—the women voters outnumbered the men. They voted conservatively and intelligently, and showed astonishing capacity to extemporize a political organization on short notice. Voting was popular; even fashionable, and it all came about so naturally that the novelty at once wore off and it did not even "seem queer." So far as this one example indicates anything, the experiment is brilliantly vindicated.

The recall of judges was enacted on a sentiment and opposed on a theory. Probably few of its advocates contemplated making much practical use of it, and few of its opponents much feared that it would be practically abused. In fact, the chief practical objection to the recall is the fear that it may weaken our present useful custom of intimidating judges by agitation and abuse. With the recall in reserve, agitation which fails to resort to it may be discounted as a bluff. There is a certain plausible logical objection in the inconsistency of setting judges to safeguard a fixed constitutional standard against the will of a temporary majority and then subjecting them to the discipline of that majority for so doing. But this extreme conception of the judicial function is such an anachronism, and is now so thoroughly repudiated by everybody, high and low, except the lawyers, that arguments based on this illogic are not received even with patience. While the American people may not yet be ready to reduce the judiciary to its original judicial function, they are so disgusted with the consequences of its historic usurpations that they are willing to set up alongside of it a new institution inconsistent with its self-assumed political functions, and let the two fight it out. And while there is not likely to be much actual conflict—since no judge will be recalled except in a case so flagrant that the issue becomes personal, rather than institutional—the mere passage of the recall amendment by an overwhelming majority serves as notice to the judges that there is a new twentieth-century spirit abroad, which demands recognition of their eighteenth-century-trained minds. So long as they suppose this to be a mere popular agitation, led by demagogues, they may fear or despise it, but their aroused attention may finally discover that the same sentiment is shared by the best thought of the country, including the really learned members of their own profession. Then they will respect it. The legal profession is the only one whose average thinking has remained absolutely untouched by the revolution which the evolutionary method has made in all other human thinking. The great lawyers of course understand, but even mediocre school teachers, physicians or labor-unionists understand. The average mediocre lawyer still adheres to the eighteenth-century method of deducing conclusions from assumed abstract principles, and he imagines this habit is the mark of a "trained mind." It is of the sort of training illustrated by the asymmetric pectoral muscles of the tumbler pigeon whose normal method of forward flight is a back somersault. Probably this assemblage, representing the best professional learning in America on questions of political science, would be unanimous in declaring undebatably false the very things which the average bar association assumes to be axiomatically true. The sooner the lawyers discover this, the more readily they will give up their present assumption that it is only ignorance which prevents the acceptance of their conclusions by the laity. What the legal profession needs is to become either a learned or an unlearned profession. Its thinking, either way, would then square with common sense. Until then, a salutary distrust of lawyers and judges will remain one of the useful evolutionary forces. If that distrust is expressed sometimes with startling offensiveness, its educational value is thereby increased. Thus the very agitation for the recall of the judiciary is a long step toward getting that sort of a judiciary which nobody will want to recall.

The evolution of the new American state organization is not yet finished. The complete supersession of delegated by undelegated government is not to be thought of. It is impossible administratively and impractical legislatively. We shall doubtless learn by experience the limitations of direct legislation, just as we are already learning by experience the limitations of direct elections. The standard, in both cases, is not "good" government, but government by the people. The election of a governor by direct vote is government by the people. The election of a state printer by direct vote is not government by the people. The adoption or rejection of a prohibition ordinance by direct vote is government by the people. The granting of saloon licenses in Brooklyn by the vote of Scoharie, or the amendment of the San Diego charter by the vote of San Francisco, is not government by the people. Popular government is the expression of the popular will, but this will can be specifically ascertained by direct vote only in the cases where it specifically exists. In the other cases it must be generally delegated to representatives authorized to make the specific application. Experience will show where the line must be drawn. Those of us who have notions of our own about it have mostly ceased preaching them, since it is evident that the lesson is going to be learned, not by listening to us preach, but by trying it out. And then the trial may show us mistaken.

But, within whatever experience may show to be its field, direct legislation has come to stay. At the same time, for most of the detailed work of legislation, representative government must be rehabilitated. It was never so needed as now. After the simplification of state constitutions, so as to confer more general powers and relieve the more irksome of the present limitations, the most important step is doubtless to give the governor the right and the duty of legislative initiative. I doubt seriously the desirability of any artificial device for getting minorities represented in the legislature. With the weakening of party lines in state elections, any minority that ought to be represented will find its own constituency to get represented from.

And there ought to be nothing that would seriously risk giving the governor a hostile legislature. He should have a safe majority to govern with, as the English government is required to have, and if constant differences between the governor and legislature block things, they should test by referendum which shall resign. The minor minorities will get more than voice enough through the initiative and the major minority will always be represented in the legislature.

One additional legislative device is badly needed—expert commissions. Experts constitute the only small minority which ought to be represented in its own right, without needing to be elected. Their function is to represent the truth, as that of others is to represent the people. Only by conjoining the two, can wise and free government be attained. We have expert administrative commissions, and we need more legislative ones. These commissions should have a limited power of initiative, almost unlimited use as reference and examining boards, for the perfection of legislation, and no power at all of enactment. The enacting authority should rest always in the people or their direct representatives. Whenever the expert commission is unable to convince the non-expert legislator, the time is presumably not yet ripe for the measure. These three branches of the legislative act could thus represent efficiency, expert knowledge and responsibility to the people. The present system lacks all three, and exclusive direct government would lack two.

The short ballot, the short constitution, direct legislation, executive initiative, a judicial judiciary, expert advice, legislative responsibility—these are the essential goals of the reorganizations of state governments. The germs of all lie in the present Progressive movement. It is not limited to the finality of any one of them. Its limitation, as judged by Socialist critics, is that it still believes that political reform is worth getting, and that the necessary economic reforms can be reached through political reform. In its own esteem it stands, for this very reason, as the only possible bulwark against the advancing tide of Socialism.

In conclusion, may I add that these comments are submitted by a practical politician, now actively engaged in the very work under discussion, who makes no pretense to the academic equipment proper to one who would deliver instruction to a learned body. With this apology, and with some diffidence, these views are submitted for whatever they may be worth.

AMERICAN DIPLOMACY IN CENTRAL AMERICA

BY PHILIP M. BROWN

Former United States Minister to Honduras

International affairs have rarely had any vital relation to the domestic interests of the United States. We are spectators rather than participants in the game of world politics. Except in moments of threatened war, the general public is quite indifferent to the management of American foreign relations. The main results of this indifference are either that the Administration is entirely free to adopt any policy it may choose, without the constant, corrective check of an intelligent public opinion, as in England, or is deprived of its effective support in some such diplomatic crisis as the Anglo-Venezuelan difficulty in 1896.[1]

Moreover, at such moments as the recent Mexican imbroglio, complete and trustworthy information is most difficult to obtain. Certainly, the Department of State is not free to disclose, even to the Senate, all the facts and factors in the negotiations in progress. Nor does it seem prudent to publish immediately all of the correspondence.[2] The most important facts of diplomacy are not always consigned to writing, or if in writing, are not to be published to embarrass for reasons of state or by way of doubtful precedent. *Litera scripta manet.*

Nor can the average reader rely implicitly on the Press. Leading articles, terse paragraphs and brilliant editorials may present in broad outline the salient facts in a diplomatic situation but err in their conclusions. Favorable comment is as likely to be undiscriminating as hostile criticism. Any one who has made a close study of some particular field of diplomacy is constantly made aware of the extreme exactions made by the Press on the powers of discrimination of the average reader.[3]

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[1] This fact is noted by Richard Olney in an article entitled, "International isolation of the United States" in the *Atlantic Monthly*. Vol. LXXXI, p. 577.

[2] The published volumes of Foreign Relations are quite as likely to mislead as to inform. Witness the Clayton-Bulwer correspondence where asterisks indicate important facts omitted and chance phrases give a partial idea as to the nature of those facts.

Now these two facts, namely: the general indifference of the American public regarding the conduct of foreign affairs, and the great difficulty of keeping constantly and accurately informed concerning diplomatic questions, are especially to be deplored in respect to our relations with Central and South America. The United States, under the Monroe Doctrine, has a peculiarly difficult rôle to play. Its responsibilities are tremendous and at times most embarassing. In this particular field of American interests, it might fairly be expected the general public would be somewhat concerned. Yet how little the public really knows on this subject and how little it apparently cares!

The sources of information regarding Central America are limited and often unreliable.[4] Snapshot pictures by casual travellers or the impressions of prejudiced residents in these countries are of slight value. The same is true of the many excellent publications issued in the interests of these Republics. Writers of articles and books seem often to have been misled in important respects by such external evidence as constitutions, legislation, existing institutions, literature, etc. One who has never visited Central America or resided there can hardly form from afar an adequate conception of the existing situation,—a bitter fact which the American diplomatic representative and consul have to bear in mind in the sending of every despatch to Washington.

Conditions in these Republics are indeed abnormal, and the purpose of this paper in its restricted limits is merely to attempt to suggest something of the difficulties of American diplomacy in Central America. with an indication of the nature and trend of American policy.

The five states of Central America, reaching from Mexico to Panama, form a territory slightly larger than California or one-fourth the area of Mexico, with a total population of less than four millions, and a combined revenue of approximately $15,000,000.

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[3] Because of our isolation and complete detachment from "world-politics" and the intrigues of Europe, we have not yet developed a corps of editors and correspondents trained in diplomatic affairs such as have made famous the *London Times* and the *Spectator*.

[4] Most books on Central America are rather travellers' notes than close studies of actual political conditions. The delightful books by E. G. Squier and John L. Stevens, both formerly in the diplomatic service, are unfortunately out of date. Doctor Karl Sapper, the German scientist, has written two good books entitled "Mittelamerikanische Reisen" and "Das Nordliche Mittel-Amerika." Perhaps the most suggestive recent book is "Central America and its Problems" by Frederick Palmer, the journalist, whose analysis of existing conditions and estimate of American diplomacy show keen powers of observation and insight.

The form of government in each state is republican with power highly centralized. Though the usual separation of powers is prescribed by their constitutions, as a rule the supreme authority is the executive. The initiative in most matters does not come from the people. Everything springs from the government. Self-government as understood in the United States is a conception dimly apprehended in Central America.[5]

The people of all five states, without serious variation, are essentially one in blood, language, customs, sentiment and religion.[6] Citizenship in one state gives the right to claim citizenship in any of the others. In fact, their constitutions explicitly affirm that each state is to be regarded as temporarily withdrawn from the Central American Federation which it is expected may some day be restored.[7]

From the American point of view, we must be prepared to recognize that there exists,—if not a live antagonism,—certainly, a wide gulf, between the Spanish American and the Anglo-Saxon. Their ways are not our ways and our ways are not theirs. Our direct methods of thought and action, to them are often intolerably inconsiderate and rude. Possessed of great charm of manner and brilliant powers of mind, their indirect processes of reasoning and elaborate formalism, however, make extreme demands on our patience. Their political habits, their attitude towards law and the courts, are almost the reverse of our own.[8] Their literary and social enjoyments are very distinct and their general sympathies are much more closely related to Europe than to the United States. Such being the case, it would seem on the whole preferable to frankly admit at the outset, that while the two races may heartily respect each other, it is too much to expect that they should ever be intimate friends having common interests and sympathies.

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[5] Political principles play but little part in elections. The system of "personalism," or "caudillaje,"—of devotion to personal leaders rather than to principles,—has been the curse of Central American politics.

[6] In certain states the Indians predominate overwhelmingly, but the ruling class is an oligarchy of mixed blood—the "ladino." The pure Spanish element is very snall except in Costa Rica where the Indians were never numerous. The Statesman's Year Book gives the population as follows:

Costa Rica, total, 351,176; Aborigines, 6,289. Nicaragua, total, 600,000; bulk of population is Indian, mulatto or of mixed blood. Honduras, total, 500,000; bulk of population is Indian and mixed blood. There are 90,000 uncivilized Indians. Salvador, total, 1,116,253; Ladino, 772,000; Indian, 234,648 (an obvious error). Guatemala, total, 1,882,992; 60 per cent. are Indian.

[7] The original Federation formed at the time of the separation from Spain, lasted nominally until 1839. The separate provinces had long enjoyed practical autonomy under Spanish rule and had no real sentiment of political solidarity.

[8] The Spanish-American mind seems unable to respect law in the abstract. With him, power, authority, is law. He regards the judicial code as a mass of conflicting

Historically, the Spanish-Americans have cherished in their hearts a marked aversion for the Yankee. The taking of California from Mexico, the occupation of Porto Rico, the protectorate over Cuba, the receivership in Santo Domingo, the coup d'état in Panama, are all held to be palpable evidence of a lust for territory and warnings of the ultimate fate awaiting other countries on this continent. Every intervention of the United States, while approved by the faction immediately favored, is viewed with apprehension by all other Spanish-Americans.

The name of Walker,—the irresponsible filibuster,—is still synonymous with American aggression.[9] In San José, the capital of Costa Rica, is an impressive statue representing the cowed, abhorred Yankee being driven from the soil of Central America. The appellation of "gringo,"[10] whatever may have been its origin, certainly has as offensive a signification as that of "greaser" for the Mexican.

Diplomacy, by rigidly square dealing and by encouraging a friendly appreciation of all that is admirable in both races, is able to do much to lessen this natural antipathy. But the best efforts of diplomacy are not always well seconded by Americans in these countries who forget that they also are United States representatives. There are many Americans in Central America, who by friendly sympathy and tact, are able to maintain the most satisfactory relations with the people and governments with whom they may have to deal. There are however, other Americans who, forgetting that they are in a sense, guests of the country where they reside, abuse its inhabitants, revile its insti-

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rules which may be interpreted according to the whim or prejudices of the judge. The contrast between the Latin and English systems of jurisprudence is well brought out by W. S. Logan in the *Forum,* Vol. XXVI. "The basic difference between the two systems of jurisprudence is that the one accords privileges, while the other protects rights."

[9] "Byways of War, The Story of the Filibusters," by James Jeffrey Roche.

[10] "Gringo" is said to have had its origin during the Mexican War, from the first two words of a popular song "Green grow the Rushes," sung by the American soldiers and imperfectly caught by their enemies, the Mexicans.

tutions, unnecessarily antagonize the government officials, formulate complaints,[11] present claims[12] of doubtful merit, and call upon the Legation to launch ultimatums at frequent intervals. There are the "caballeros de industria,"—the picturesque though erring soldiers of fortune. There are the social derelicts who have left home for their country's good. There are the concession hunters and the professional promoters, seeking impossible privileges they never can utilize and piling up embarrassments for their own government as well as for the misguided government, which through illusion or devious means may have been induced to compromise national interests.[13]

All such make the work of the American diplomatic representative extremely onerous and ungrateful. If he is what is popularly termed a "sidestepper," in trying to avoid unpleasant diplomatic issues with the local government and at the same time satisfy his aggrieved compatriots, not to mention his own government, he usually falls between the two stools. If, on the other hand, he is normally conscientious, he finds he must either incur the hatred of the complainants who may be able to cause him serious annoyance, or he must in cases deserving diplomatic action, make unpleasant representations without the certainty of receiving the approval and support of Washington. By reason of his special knowledge of the facts in a given case, he may be placed in the disagreeable situation of having to offend powerful interests by recommending that some claim which has been cleverly presented to the Department of State, should not be pressed because founded on unjust grounds. He is likewise in constant danger from that spectre which haunts every diplomat, of being denounced as *persona non grata* by the government he may be insistently endeavoring to induce to do what it has no desire and perhaps no intention to perform. Representations adroitly made at Washington frequently result either in the impairment of his prestige and usefulness, or ultimately in his complete discomfiture and removal.[14]

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[11] The archives of every Legation are full of complaints made under oath in the form of affidavits, which as ex-parte statements of alleged facts, seem to call for diplomatic action. But on careful, dispassionate investigation, it is often discovered that the complainant has been in the wrong and entitled to little sympathy. One alleged victim of official outrage admitted that at the time of the incident, namely 7 a. m., he had had two cocktails! Yet such instances are often adduced to show that Americans in Central America do not receive adequate protection.

[12] Some men seem to act on the principle that "a good claim is better than a bad business."

[13] The writer regrets that most of the observations made in this paper rest on personal experience rather than on documentary evidence. Very little of this nature is ever published in the Foreign Diplomatic Correspondence of the United States.

The functions of an American representative under such conditions, it will be seen, call for an extraordinary degree of tact, patience and courage.[15] He is dealing with situations for which no exact precedents in international law may be found. He cannot ask Washington for detailed instructions, nor can Washington instruct intelligently at every juncture. He must not only protect American interests from all possible violation, but often, if he has gained the confidence of the government to which he is accredited, he is called upon to advise, to caution, to warn, in order to save that government from a serious misstep, even in cases involving his own countrymen. He is court of appeal when the local courts fail grossly to accord justice. He must virtually ignore existing laws, at times, by requesting the executive to rectify wrongs done by an abuse of its powers through the courts. In time of war, when ordinary guarantees are suspended, he must take extraordinary measures for the protection of all interests. He may find himself, as did the writer, at a moment of the complete disappearance of all authority, in the embarrassing situation of being compelled to maintain law and order pending the establishment of the new government.[16] He may be threatened with assassination or even fired upon by irresponsible miscreants. On his request, American warships may be required to prevent the needless bombardment of unfortified ports and even to land marines to maintain public order and ensure the administration of justice, for an extended period of time until the responsible government is installed.

For the theorist and strict constructionist in international law, it may be difficult to perceive just how an American official may assume the right to act in ways so obviously inconsistent with the law of nations. The independence, equality, sovereignty of nations forbid all such interventions in the internal affairs of other nations. The United States, he may well object, has no more right to intervene in a Central American war to prevent the bombardment of a port where no American interests of importance are involved, than it would have to attempt to stop the siege of Port Arthur by the Japanese.

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[14] It must be remembered that the American official has not only the strain of responsibility, but that he is often living in tropical surroundings that undermine both health and nerves. Climate plays a most important part in Central American diplomacy as it does in other tropical countries. Allowance should ever be made for the over-heated state of mind that is liable to characterize certain diplomatic negotiations. In fact, following the British custom in India, no American official should be kept too long in a tropical post.

[15] A curious extra-official function of American representatives in Central America which is often most exacting, is the protection of the interests of the Chinese who are quite numerous. This is by request of the Chinese government and with the consent of these Republics. See Foreign Relations. 1903, p. 572.

[16] Foreign Relations, 1907, p. 627.

The answer to such objections is: first, that international law as applied in Central and even in South America, is in many respects distinct from that of Europe; and secondly, that the United States has had imposed on it certain definite obligations in Central America.

The isolated, untrammeled existence in this Western Hemisphere, of states enjoying an essential solidarity of sentiments and interests, has given rise to a distinct body of international law.[17] Here exists a separate family of nations recognizing rules and principles of intercourse which, while differing from those generally accepted in Europe, have also profoundly affected European concepts of the law of nations. The development of the doctrine of insurgency [18] has been distinctly American.[19] The status of foreigners during civil commotions has been differently regarded in Spanish-America than in Europe.[20] The important decision of the last Hague Conference respecting the Recovery of Contract Debts, had its origin in the peculiar financial problems of these countries.[21] The most favored-nation treatment generally accorded elsewhere would not ordinarily be claimed by foreign nations where Spanish-American states have granted each other mutual privileges of a family nature.[22]

But we are especially concerned with international law as applied to Central America, whose status is different from that of most of the states of South America. And in all fairness it must be recognized that Costa Rica, by reason of its advanced political development, should be placed in a different category from the other states of Central America.[23]

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[17] This subject has been fully and admirably treated by Señor Alejandro Alvarez of the Chilean Ministry for Foreign Affairs, in the American Journal of International Law for April, 1909, and in his book published in 1910, "Le Droit International Americain."

[18] Wilson. International Law, pp. 43–49.

[19] The term American can hardly be appropriated exclusively by the United States. Spanish-Americans differentiate by denoting citizens of the United States as North-Americans.

[20] The decisions of the Venezuelan Claims Commission, 1903, contain much valuable material on this subject.

[21] The Hague Peace Conferences; A. Pearce Higgins, pp. 180–197.

[22] Moore's Digest of International Law. Vol. V., p. 260.

Owing to the arrested political development of certain of these countries: to the absence at times, both in peace and in war, of ordinary guarantees to persons and property: when the avenues to the courts are closed: when the executive has absorbed all powers to the harm of his own countrymen as well as of foreigners; it becomes necessary to deny to such states an unqualified status under international law.[24] All states are not equal. All states are not so completely sovereign as to be free to do as they please with the stranger within their gates. There are situations where a nation may properly exact in behalf of its own nationals, not merely as *good* treatment as that accorded the natives of another, but infinitely better treatment.

The status of minority of certain nations is coming to be generally recognized and this fact should act as an added stimulus to such states to prove themselves worthy of the rights of independence and equality.

Though the republics of Central America are under no specific tutelage and naturally resent being treated as children, they cannot object to being considered as our younger brothers whom we hold in affection and desire earnestly and disinterestedly to help.

The United States has had imposed on it certain definite obligations in Central America. These obligations flow, first from the special concern it must have for the protection of American interests, bearing particularly in mind the proximity of Central America to the United States and to the Panama Canal; secondly, as convincingly pointed out by President Roosevelt at the time of the intervention in Santo Domingo in 1905, from the necessity of seeing that European interests are properly safeguarded nor allowed to suffer from what has been aptly denoted as "the forceful feebleness" of these smaller countries; and thirdly, these obligations flow directly from engagements towards the people of Central America incurred by the United States in recent years.

Since 1906, Central America has been the theatre,—not of opera bouffe, as some superficial observers would have it,—but of two wars, three successful revolutions and five abortive uprisings, not to mention sundry plots by assassination or otherwise, to overthrow the existing governments. During this turbulent period, the policy of the United States has developed by progressive steps from simple mediation between these republics, to direct intervention in their domestic affairs. We are constantly being reminded that:

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[23] Costa Rica has not had a revolution for nearly thirty years.

[24] The contradictory rulings of Bayard in the Gamez case (For. Rel. 1885) and of Blaine in the Barrundia case (For. Rel. 1890) regarding the right of asylum on merchant vessels, are to be explained by the fact that Bayard assumed Central American states to be on an equal footing with other nations, while Blaine accorded them only a qualified status as regards the application of the principles of international law.

> "When constabulary duty's to be done,
> The policeman's life is not a happy one."

The chief events to be noted in this connection are as follows:

The brief war of 1906 between Guatemala on the one hand, and Salvador and Honduras on the other, was terminated by a treaty of peace signed through the mediation of President Roosevelt and President Diaz, on board the gunboat Marblehead.[25] This treaty provided that all future differences between Central American states should be settled by the joint arbitration of the Presidents of the United States and of Mexico. Nicaragua alone refused to adhere to this agreement, which it chose to regard as a dangerous recognition of the right of intervention by the United States.

In February and March of 1907, occurred the war between Nicaragua and Honduras which threatened to embroil all the other republics, and which demonstrated the need of more effective guarantees for the maintenance of peace. On the initiative of President Roosevelt, a special peace conference of delegates from all five states was held in Washington in November and December of 1907. Its chief results were the creation of the much lauded though impotent Central American Court of Justice, and the agreement to consider Honduras, by reason of its geographical location, as neutral territory in time of war.[26]

It was not long before the United States came to realize that such agreements were of no value without the sanction of force. This duty of enforcement seemed to devolve on the United States with the nominal co-operation of Mexico,[27] both governments having participated actively in the peace conference of 1907 and thus become sponsors for the execution of its solemn engagements.

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[25] For. Rel. 1906, p. 851. This treaty was signed on the high seas in rather rough weather, which circumstance led some rabid critics of the United States to seriously intimate that the peace delegates had been deliberately carried out to sea to coerce them into the signing of a treaty they would not have signed on land. It is probably true that their respective governments would very likely have preferred to have been able to control by telegraph, their discussions and decisions.

[26] For. Rel. 1907, pp. 636–727.

Thus in March, 1909, American naval vessels in Central American waters were authorized to prevent any further violation of the Washington Conventions of 1907, by Nicaragua, in launching filibustering expeditions against the neighboring state of Salvador.

The revolution on the Atlantic coast of Nicaragua in October of 1909, and the unjustifiable execution of the two Americans, Cannon and Groce, compelled the United States to intervene again in Central American affairs, in such a manner as to force President Zelaya to resign and enable the revolutionists ultimately to triumph. A further development in American policy was the agreement entered into at that time that the United States should assist Nicaragua in the rehabilitation of its finances.

The return to Honduras in February 1911, of Ex-President Manuel Bonilla who had been ousted by Nicaragua in 1907, was still another occasion for the direct intervention of the United States. British and American marines were landed and stationed for several weeks at Puerto Cortes and the inland town of San Pedro Sula.[28] Fighting was prohibited in both places and the two rival factions were notified that a peaceful solution of their difficulties must be found. The apparently happy result was the choice of a provisional president agreeable to both factions, and a subsequent free election in which General Bonilla was again chosen to the presidency. As in the case of Nicaragua, the American government signified its desire to lend its good offices in support of certain measures for the refunding of the national debt of Honduras.[29]

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[27] The question of Mexican relations towards Central America is important as well as delicate. By reason of its frontier with Guatemala, Mexico has peculiar interests which cannot be ignored. The attitude of Mexico as expressed by President Madero in a recent message to the Mexican Congress is as follows. "My belief is that a Central American union, alone means the establishment of permanent peace in these countries." *Boston Transcript*, Dec. 18, 1911.

[28] In view of the long and arduous efforts of American diplomacy, from the time of the Clayton-Bulwer treaty, to eliminate British interference in Central-American affairs, it is difficult to understand the reason for the joint action of England and the United States in this instance as well as the action of England in the previous revolution in Nicaragua, in preventing the capture of Greytown by the revolutionists.

[29] The texts of the conventions negotiated with both Nicaragua and Honduras for the adjustment of financial difficulties, are given in Supplement of A. J. I. L. October, 1911.

From this rapid survey two important facts are to be emphasized: first, that the policy of the United States towards the republics of Central America has developed since 1906 from simple mediation and scrupulous non-intervention, to a policy of active, direct intervention in their internal affairs; and secondly, that these interventions have become as startlingly frequent as they have become increasingly embarrassing in character.

The dangerous trend of such a policy towards an actual intermeddling in the administration of these countries, would seem fairly obvious. Such a result, from every point of view, whether of the United States, of the state immediately affected, or of other Spanish-American states, would be as lamentable as it would appear unnecessary.

The obligation of non-intervention by one nation in the internal affairs of another, is a sacred principle of the law of nations and is correlative with the right of independence.[30]

While intervention in Central American affairs has seemed at times, like military necessity, "immediate and admitting of no other choice of means," the main object of American policy should be to remove the causes for such interventions. A general remedy is required, rather than palliative treatment locally applied. Such a remedy, namely, the restoration of the union of the five states, is at hand ready for use, if the United States is prepared to assist in its application.

Webster, in 1851, soundly observed: "How little is the probability that Central America . . . can ever attain her proper dignity and proper destiny while divided into so many small states." [31] And Blaine, with his sympathetic appreciation of Spanish-American problems, said in 1881 that, ". . . the United States is ready to avow that no subject appeals more strongly to its sympathy, nor more decidedly to its judgment. Nor is this new policy. For many years this government has urged upon the Central American states the importance of such a union to the creation of a well ordered and constitutionally governed republic. . . ." [32]

The attainment of this end has been prevented mainly by selfish interests, petty dissensions and mutual distrust.[33] It is the main plank in the political creed of every patriotic Central American. They are only awaiting the effective initiative of the United States in order to make this ideal a reality.

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[30] Wilson and Tucker, International Law; p. 87.

[31] Senate Doc. No. 25. 34th Congress, 1st Session.

[32] For. Rel. 1881, p. 816.

[33] See For. Rel. 1907, pp. 721–727, for arguments presented by certain delegates at the Washington Conference of 1907, in favor of the union as the only thorough solution of the Central American problem. An enthusiastic convention of journalists from the five republics, held recently in Salvador, adopted resolutions in favor of the union.

American diplomacy has had a thorny road to travel in Central America and has been painfully barren of beneficial results. It is not conceivable that thinking men in this country should remain indifferent to the solution of so great a problem. The Administration at Washington, which, by the exercise of the loftiest constructive statesmanship, is prepared to aid the people of Central America to attain their noblest ideal, will build for itself a lasting monument in the hearts of all Spanish-Americans. The United States will be freed from the embarrassments and perils of irksome interventions as well as from unjust imputations of serving unworthy ends. It will be able to demonstrate irrefutably that the Monroe doctrine does not serve to perpetuate bad government; but that its beneficent effect is to enable the people of this Western Hemisphere to emerge from chaotic political conditions, and to achieve, unhindered, their highest aspirations and destinies.[34]

[34] Students of conditions in Central America may well be inclined to recognize some force in the theory advanced by Benjamin Kidd, namely: ". . . that the European races will gradually come to realize that the tropics must be administered from the temperate zone." ("The Control of the Tropics," p. 85.) But the United States cannot act on any other assumption than that all of the republics of Central America are as capable of self-government as Costa Rica has proved itself to be.

THE POINT OF VIEW OF LATIN-AMERICA ON THE INTER-AMERICAN POLICY OF THE UNITED STATES

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I must ask to be excused by my distinguished colleagues for the poverty and want of science of this work and I beg that it be considered merely as a contribution towards a future study of the subject. I was asked to lend my modest assistance to the convention only a few days before the opening of the session, so that it was absolutely impossible to prepare a more elaborate work.

I ought to state at once that it is very difficult to set forth the Latin-American point of view on the inter-American policy of the United States, because, if the question be what the judgment of the South and Central American Republics is upon the subject, then the general diversities geographic, telluric, climatic and sometimes racial, the diversities of culture, interests and development, of these Republics make impossible the existence of a common point of view, though a widely different belief is held in the United States. Furthermore, the personality of Latin-America as a political entity does not mean more than a "conventional lie," for that is what it is.

Latin-America is merely a metaphysical person, a juridical entity created by the United States to be a pattern of uniformity to which it may adjust its international policy toward the people of the South and Central part of the Continent. Latin-America is a fictitious person and therefore a conception contrary to the reality. It is a legal impossibility being a *de facto* impossibility.

Latin-America still remains an entity for the United States, simply through the inertia of things. Fifty years ago the same yardstick was employed in the diplomatic proceedings with all the Southern Republics. That same yardstick is still used today, partly through ignorance and partly through a misunderstanding of mutual interests, despite the fact that the conditions of these countries have totally changed. Some of them are fully developed; while others continue in the same state of half a century ago. Nevertheless, the United States insists upon giving life to and still maintaining the death-mask called Latin-America, cast upon the face of the Southern nations in 1860. It was a policy without discrimination, a policy sure to dilute the already existing, strong, and constituted nationalities, under the pretext of recognizing a personality superior to them, having a continental character, namely: "Latin-America."

It seems as though the United States considers it a matter of praise to recognize only that vague and intangible entity that causes a "cap itis-diminutio" to the other entities which are independent and are organized on very certain and positive bases. The European powers seem to ignore the existence of a Latin-America, similar to that conceived by the United States, and recognize, on the contrary, only single powers as Re-púb-lica Argentina, Estados Unidos del Brazil, etc.

It seems to us that the moment has arrived for the United States to abandon once for all time this much commented upon, international policy towards Latin-America. Let the United States commence instead an era of wise management towards each of the Republics individually, turning her back upon the paths of ignorance and blindness that still remain obstacles to the free development of a policy of the future which shall be based on less lyric phraseology and on more positive facts. The advantages would be without number.

Not quite a year has passed since the publication in Paris of a book entitled, "The Future of Latin-America" by Manuel Ugarte. The book is a most accurate compilation of statements made by the imperialistic politicians, the most "enragés" to be found in the United States. The volume concludes with a thunderous summing up, in which he forecasts the final North American rule for the whole western hemisphere, unless the Latin-American Republics confederate themselves and tighten the bonds of blood and of origin. As grounds for the thesis of this book, there is quoted the following statement by Mr. Taft taken from his speech of February 22d, 1906, when he was a minister under President Roosevelt:—"The frontiers of the United States virtually extend to the Land of Fire."

I do not doubt that had I come to this convention to uphold the thesis of the volume which I have just mentioned I would be concurring with the tacit and universal way of thinking in the United States which supposes this to be the unaminous opinion of the people of the Republics of the South and Centre of the Continent and too, it would probably provoke a certain slight satisfaction in the North, since it is human weakness to enjoy the knowledge that we are a cause of fear.

Nevertheless, I hasten to say that such a thesis will not be mine, since it is nothing more than the product of the blindness of some in South and Central America, about what the policy, men and ideals of the United States really mean. In short, it is a thesis based upon an erroneous premise which presupposes an inexact state of facts.

The burden of Sr. Ugarte's book and the juridical entity created by the United States have apparently both, in spite of being products of very diverse tendencies, some points of contact or similarity, since it is possible to bring the views into accord. We do not know when it might be possible to have a Latin-America created in fact out of the mere concept of such a juridical entity as exists today. Allow us to affirm that this "possibility" seems to be an "Utopia" which becomes every day more impossible, since some of the Republics are now progressing at the expense of the principle of union, since they are self-sufficing, politically and economically.

The diversity of those Republics, the absolute lack of any positive interest towards the union, make the idea of a confederation more than "Utopian"; they make it an offense to the strong nationalist feeling already so highly developed in some of the countries.

Leaving out of consideration the enormous extent of the territory there is a very striking fact and one that will militate more than any other against such a dream, we mean the want of balance in the development of those countries. One of them is triplicating or quadruplicating its population in a few years while there are others which maintain a decreasing index. Such a condition in the land of deserted prairies and wild forests means the existence of parasitic countries that renders the fact of union impossible.

The climate also is a factor that we must not forget when studying this problem, since two-thirds of the territory are included within the torrid zone which is generally regarded as unfitted for the complete and lasting progress of a Caucasian race and of civilization. The line of the tropic of Capricorn has in connection with this subject a very precise meaning since it divides peoples having different aptitudes, temperaments and destinies. That territory which under the Spanish domination was the Viceroyship of the Rio de la Plata is located for the most part south of that line, and today it is nearly all included within the boundaries of the Argentine Republic whose climate and production, as well as the character of its people, resemble closely those of the United States. Bold, tenacious, hard-working, enterprising, are the Argentines as are their Northern brothers.

The want of balance already pointed out in the career and type of those Republics has been a powerful influence in determining equation of an international order of very striking differences. While Argentina, Brazil and Chile, for instance, have their value on the international market on the basis of parity with the other powers, the other Republics, though maintaining a seeming legal parity, are suffering a very noticeable depreciation.

These preferatory facts have been set forth in order to give a synthetic and clear basis to the statement with which to begin this report, namely the impossibility of finding a "Latin-American" point of view on the inter-American policy of the United States. This "impossibility" lives in the very soul of things. But some one may ask, "Since the United States does have an inter-American policy, how may that policy be judged?"

We may suggest a way by which the nature of the problem before us may be made clearer. That is to study one country which is a type, not of its sister Republics, because that is impossible, but a type of the kind of civilization that Europe is developing in the Southern Hemisphere. It will give to us a point of view much broader and more human than the "local" point of view, which is essentially narrow, selfish, and anti-social.

As a matter of fact it is of the greatest interest to the United States to know how the European civilization that has developed in the South, judges the inter-American policy adopted by the United States. To show this is a very difficult task, because it is necessary to avoid the mistake and danger of taking as a type of this civilization the vicious habits of colonial stock, no matter how general and common that stock may be. This point of view we think should prevail here, since affairs of transcendent importance must be interpreted by data of transcendent importance, guided not by a "village policy," nor dictated by jingoistic periodicals. We must face the problem with the practical and high conceptions proper to the subject. What good results can flow from establishing positively that in some of the American countries the United States is regarded with mistrust and suspicion? How will it profit the United States to judge all American countries by what Cuba, Mexico and Central-America think? Nothing, positively nothing. This would be but to repeat the narrow policy of the North American daily newspapers, a policy that is the offspring of the spirit of "sufficiency" that vitiates a people, who are happy in believing that all the unknown of America have the same characteristics as their nearby neighbors.

We sincerely believe that not a single positive result will follow from re-echoing here in the United States feelings that are best characterized as "localism." These are not the feelings which the United States should hope to satisfy with its policy. International peddling of the remarks of some foolish politicians and the indiscretions of statesmen-dreamers will not help to forward goodwill and peace among American nations.

There is a more positive policy to follow and that is to make all American countries, North or South, to know and to understand the sane and truthful situation in each of the other American countries, and thus avoid the misunderstandings and suspicion exploited by the professionals of the sensational.

Consequently we will judge the inter-American policy of the United States by that which the best type of modern European civilization in the Southern Hemisphere thinks of that policy, namely what the Argentine Republic thinks. This country I do not need to introduce to you because its progress, virtues and ideals are today no longer bounded by Continental limits but are known throughout the world.

The first thing that strikes the Argentine when he arrives in the United States, is that everybody here believes that Argentenians, like Mexicans and Cubans, are obsessed with the one notion that the only really great problem is what the United States actually will or will not do. He who thinks this is fundamentally mistaken. The inter-American policy of the United States does not interest the Argentine nearly as much as does the policy of Europe. The people of Argentine take no interest in the inter-American policy of the United States. Their newspapers and periodicals make only incidental reference to it, while the university and intellectual circles give it only cold and academic examination.

The Argentine Republic is geographically very far from the United States. This may be a partial explanation of this relative indifference. On the other hand, there are not in the world two countries with greater similarities and with a greater community of ideals towards the well-being of the world than the United States and the Argentine. The United States is the only country in the world with which the Argentine can be adequately compared.

The whole historical and political evolution of that Republic has followed, through a different way, the same course that the United States has followed. Therefore its best interests are neither antagonistic, divergent nor convergent, but parallel.

That explains why nobody in the Argentine fosters suspicions about the United States. On the contrary, all Argentines love and admire the United States. The attempt of the professional alarmist to arouse mistrust will not find propitious environment, because such feelings can be aroused only among weak peoples and Argentine is economically, socially and politically very strong.

The tie that at present binds both countries is an intellectual one, founded on community of ideals, the economic factor as yet weighs very little. But Argentine is anxious to increase its business with the United States. This can be done as soon as the United States will modify its attitude toward and for Argentine.

The Monroe Doctrine is the basis of the inter-American policy of the United States. It is very carefully studied in Argentine where it is considered to have a temporary usefulness, though many of the causes that gave it life have actually disappeared. Argentine is to-day protected against any attack, not only through its positive strength but through its international and economic position.

The statement that any power was plotting against the territorial integrity of the Republic would be laughed down by all Argentines. The Monroe Doctrine has not, for this purpose, any direct utility. At the most it has the indirect advantage that it may safeguard, for the present only, the territorial integrity of the other parts of the continent, as happened in the conflict between England and Venezuela.

It would not be possible to apply the Monroe Doctrine to any case connected with Argentine, without committing an offense very prejudical to the best interests of the United States. In its essence the Monroe Doctrine is tutelage. No such policy of tutelage could be carried out without gravely offending the very strong national feeling of this people.

The intelligence of Argentina and, as a general rule, of its statesmen, has always followed with professional interest the vicissitudes through which the Doctrine has passed, vicissitudes that speak so highly of its elasticity. I mean the various interpretations that the Doctrine has suffered since its enunciation so long ago, some of which have been due to an "economic imperialism" that wishes to disguise itself under the robes of the Monroe Doctrine. So far as Argentine is concerned, it is well understood that this economic imperialism is a legal and logical product of the natural expansion that any country undergoes when it reaches the industrial stage.

Economic imperialism is very wholesome when carried out with discretion, because, as a rule, it means a counter-balance to the economic influence of other centers of production and promotes competition to the benefit of the inhabitants. Economic imperialism will also often be of great assistance to the backward countries that cannot follow the progress of the nations.

Economic imperialism is never dangerous to the stability of other countries except when it is transformed into political imperialism. This is the reason why Argentine and all the other nations of like social development are not frightened at commercial expansion, the first symptom of a policy of economic imperialism.

What harm has ever been done by economic imperialism of different nations? What harm has been done by the economic imperialism of Germany? What prejudice of a social or economic nature has ever come from English economic imperialism of the nineteenth century?

It seems to us that England's policy of economic imperialism not only was unharmful, but has brought lasting benefits to it. To it the Argentine is indebted for the promoting of the May Revolution by which it gained its independence, and the world is indebted for the proclamation of the Monroe Doctrine.

As a principle, economic imperialism can never be opposed to a general and well defined social interest, because it is the product of a human equation that revolves about human interests. It is impossible for man's fancy to divert its tendency or stimulate its activities beyond proper limits.

When some harm appears to come from its activities, we must then carefully investigate before we state in definite terms that that harmful tendency is the product of economic imperialism. As a general rule, such cases are the results of governmental interference by which a government has sought to improve, increase, or modify human energies. But then the harm is not the work of economic imperialism, but the work of a political imperialism that always appears when the former declines.

The frequency with which the United States intervenes in Central America and the West Indies, besides the purchase of the Philippine Islands, at the end of the war with Spain, gave origin here to the famous political campaign against imperialism, whose index was the Kansas City Platform. In many of the Republics in the Central and Southern parts of the Continent it gave rise to an outcry against this political imperialism.

Argentine in this emergency regarded coldly the whole affair because it feels positively that the United States never will put under its effective rule and sovereignty one single acre of the South American territory and will itself limit its policy to a commercial expansion that will require twenty years for completion.

Argentine does not believe that the future inter-American policy of the United States will be one of political imperialism, and does not even consider it either as a danger or a problem. The Argentine knows that "political imperialism" is the offspring of a degenerate economic imperialism and that the political and social aims of the United States is an economic imperialism that will require many years before it is completely carried out.

The Pan-American policy, which seems to mean so much to the United States government and which that government has always made it a point of honor to uphold, is not contrary in principle to the theses that we are seeking to maintain. But, in practice, that policy has been vitiated and rendered valueless for the sufficient reason that it is too "unilateral." It is no longer even suitable for carrying out a minimum program.

The facts completely confirm this statement. Though the Pan-American Congresses have at innumerable times advised the establishment of the metric system for the whole Continent, yet the United States persists in a passive attitude and has taken no steps to establish it. At the time that the last Pan-American Congress met at Buenos Ayres in 1910, the Argentine Congress had not yet even ratified the conventions signed in Rio de Janeiro in 1906. In short, the success of Pan-American Congresses proves to be very relative. Their program is good, but their performance is bad. There is no doubt that, if Alberdi, the Argentine constitutionalist, the father of the Pan-Americanism that Blaine brought to life again in 1889, were alive today he would be gratified to know to what extent his thought of 1844 had been developed, but he would be greatly surprised at its unexpected results. He would agree with Ferri, who in a lecture on Pan-Americanism, given at Buenos Ayres in 1910, explained "the fact of the preponderance of the United States as the offspring of an exuberant strength that would be felt though no effort were made to make it felt." Ferri adds, "we see the same thing with four brothers who love each other very much. One of them is strong and vigorous, the other three are weak. At the end of their play, which all have alike enjoyed, the weaker ones are on the floor, and the strong one still stands." That is the fact that gives moral and natural dominion to the stronger.[1]

With that our contribution to the study of the theme is finished. The observations which are the basis of this work possibly have no other value, than sincerity and the fact of being merely of a general order.

The Argentine does not pretend to dispute nor to divide at present the hegemony that United States has without dissention in America. But before two decades have passed, the Argentine Republic, the nation which some one characterized at the White House the other day as "a problem for us" will have thirty millions of inhabitants, its trade will be multiplied in a way impossible to forecast, and its navy and army will be sufficient to guaranty the realization of all its progressive ideals. Then the United States will have to admit the younger nation as a collaborator in the task of a great people. Then peace and welfare will forever abide in the American Continent.

The Argentine also has a manifest destiny.

To begin a special policy toward Argentine, and with the other countries standing on similar bases, putting aside in connection with those countries all idea of a general policy for Latin-America, this, should be the chief principle in the new diplomacy of the United States.

[1] "La Nacion" Tuesday, 18th Oct. 1910.

THE RELATIONS OF THE LEGISLATURE TO THE EXECUTIVE POWER IN CANADA

BY GEORGE M. WRONG

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The two English-speaking federal states which lie side by side in North America have a profound interest for each other. They have been built up by peoples of the same race, and of the same political traditions. Canada, the lesser and the younger, has been deeply influenced by the United States, the greater and the older. Federation became a vital question in Canada only in 1865 when the United States was emerging from a terrible civil war. This war had turned on a constitutional question,—whether a federated state might secede from the union. The framers of the Canadian system learned the lesson taught by the war, and, in the constitution which they drew up for Canada, they made it impossible for the provinces ever to regard themselves as sovereign communities with the right to political independence. Canada thus learned without bloodshed the lesson taught by the agony of her neighbor.

If along different paths the two systems thus attained to likeness, in other not less vital respects they still show differences. It is my purpose to-day to discuss only one of these differences. The American system is based upon the conception that no one branch of the government should be supreme, and that each should be held to its proper tasks. The President, the Senate, and the House of Representatives all possess real and independent power and, in the background, stands the Supreme Court ready to require all of them to obey the written constitution. In Canada there is no written constitution, in the American sense, with powers defined and limited, for the British North America Act, which established the Canadian system, clothes the Canadian Parliament in Canadian affairs with the vast undefined powers possessed by Parliament in the mother land. The Canadian Parliament can do practically anything it may choose. It can take away a man's property without giving him compensation; and it could even sentence the owner to death, without trial. Moreover the executive government has no independent power in Canada; so far is it from being independent that it is created and controlled by Parliament. In the Parliament itself there is no balancing of powers. The popular or "lower" house controls the Senate. The head of the state has no veto power. Those familiar with the working of the Constitution of the United States will appreciate the vital difference between the American and the Canadian system if they picture the United States without a written constitution, and the House of Representatives as so absolute that it elects the President and appoints the members of the Senate. Let them add to this that the House of Representatives is elected not for two but for five years, if it chooses to sit so long, and that it can bring on an appeal to the people at any time.

A superficial parallel between the two systems may be dismissed at once. Since the Governor-General, as representing the King, is the head of the State in Canada, it is sometimes assumed that his office is not unlike that of the President in the United States. There is, indeed, one resemblance. On formal and ceremonial occasions the Governor-General and the President are the principal figures. But here the resemblance begins and ends. The Governor-General takes no part in the working of the executive government. He is not present at cabinet meetings. He has little to do but to register a formal approval of the measures submitted to him. His functions become of real moment only when it is clear that the ministry in office has lost the confidence of the people. Then, pending the taking of office by a new Cabinet, the Governor-General may play an important part by refusing assent to administrative measures proposed by his ministers. Except in such times of crisis, however, he has no real power, for he can do nothing except through a Prime Minister who will accept responsibility to Parliament for all action. Thus the person in the Canadian system who discharges the serious functions of the President in the American system is not the Governor-General but the Prime Minister.

Before I discuss further the relations between the legislature and the executive power in Canada let me ask what is the function of government. I suppose it is the making and enforcing of the laws, and the administration of public affairs,—in a word, its real tasks are to produce a good system, well administered. Government is a matter of business and the general principles which lead to success in business will probably lead to success in government. A vital aim in all business organization is to link complete authority with complete responsibility. A great bank places its resources at the disposal of its officers and then holds them responsible for the proper use of this power. It would be futile to require results without also granting power. This business principle applied to national life means that those in executive control should have power while they remain in office. The head of a business house who was not allowed to carry out a policy regarded by him as vital would resign. Then some one would be called to his office who would do what those in control desired.

These business principles find place in the Canadian system of government. The Prime Minister has behind him the full authority of Parliament. If this authority fails him, he retires, and some one who has this support takes his office. In all except the leadership in social functions the Prime Minister has the powers of the President. He names the Cabinet and is responsible for all that is done by members of his Cabinet. He can summarily dismiss a cabinet minister. He has even more power than the President in appointing to office, since the President must secure the Senate's approval for his nominees to important posts, while the Prime Minister is not obliged to consult any one. Like the President the Prime Minister controls the military and naval forces. But the Prime Minister has other powers which go far beyond those of the President. He has complete control of finance; no vote of money can be made without his consent. He controls public legislation. He fills vacancies in the second chamber, the Senate. In him indeed is really vested the entire powers of government, legislative and executive. If a bad law is made, if money is misspent, if anything goes wrong in the administration of the government, no one can doubt who is responsible. It is the Prime Minister.

This predominance of the Prime Minister, this centralization of political authority in a single person, is a singular outcome of the working of modern democracy. Its cause is not far to seek; the people will trust only those whom they control. In Canada, as in Great Britain, the House of Commons is the only elected factor in the government. Both the Governor-General, representing the King, and the senators are appointed, the Governor-General for five years, the senators for life. The result is that the elective chamber retains all real power, and that the House of Commons rules with an unfettered sway. Under the British system, the head of the state and the "upper" house have thus lost all power but that of revision and delay; in the United States, on the other hand, the power of the head of the state has tended steadily to increase, the second chamber remains the stronger of the two chambers in Congress, and the popular chamber is the weakest of them all. Each of the three elements, however, has retained the reality of power because all three are directly or indirectly chosen by the people. A more complete contrast to the evolution in Canada of the supremacy of a single chamber can hardly be imagined.

It may be asked whether the Prime Minister, possessing such powers, does not tend to become a despot. There is no doubt that in Canada, where one party remains in power for a long time, the dominance of a single person in each of the two great parties has been prolonged. This may be due to the striking personalities of the two leaders, Sir John A. Macdonald and Sir Wilfrid Laurier who, between them, have ruled Canada for about forty of the forty-four years during which the federal system has been in existence. President Madison laid down long ago the principle that the greater a political system becomes the fewer will be those who really control it. Thus a single person, the President of the United States, is given despotic power over the executive government for four years, and during this period he cannot be removed except for grave misconduct. No doubt the Prime Minister of Canada has very great power. His supporters in Parliament can, however, turn him out at a moment's notice, if they so choose. His sway over them is that of his influence and not of the legal security of his position. But while the members of the House of Commons can discipline him, he, in turn, can discipline them. It often happens that recalcitrant members are brought into line by the threat of the Prime Minister to resign or to bring on an election before it is really due. The uncertainty, expense, and labor which this will involve, are likely to cause any but a very determined person to yield.

Since the Prime Minister must retain control of the House of Commons, he chooses his Cabinet largely on account of the influence of its members in that House. A Cabinet in Canada is something entirely different from a Cabinet in the United States. When a President takes office, he is free to choose any one who is not a member of Congress to serve in his Cabinet. A Canadian Prime Minister, on the other hand, can have in his Cabinet only those who are members of Parliament. An American Cabinet consists of men called to office to administer great public offices, and it often happens that most of its members have taken little part in political life. In a Canadian

Cabinet, on the contrary, the members must be in close touch with political parties. As a rule it is the chief political figures in the dominant party who have seats in the Cabinet. If any of them are discontented they may play a real part in driving the Prime Minister from office. To retain their support he must often defer to their wishes. The consequence is that a cabinet minister is relatively a much more important person in Canada than is a cabinet officer in the United States. In Washington it would be regarded as promotion for a member of the Cabinet, except, perhaps, the Secretary of State, to give up his office in order to take a seat in the Senate. In Ottawa a place in the Cabinet takes primacy over all other political positions.

The centralization of authority in the hands of the Prime Minister gives unity and coherence in respect to finance. His government is responsible for taxation and legislation as well as for administration. A budget is prepared by the executive government setting forth full estimates both of income and of expenditure. This budget is discussed in the Cabinet, and cabinet ministers who wish a large outlay must first get the approval of the Minister of Finance who provides the necessary income. No vote of public money can be made by Parliament unless on specific recommendation of the Government. This is again in contrast with the system of the United States. The practise there in respect to the Budget is, no doubt, undergoing rapid change, but still, almost in studied contrast with the British system, the second chamber can insert at will new items and vote great sums even over the veto of the President. The strict control of the Budget in Canada by the executive does not of course prevent extravagant expenditure, but it does, at least, ensure that a government shall know what it is doing. When the man who agrees that money shall be spent must also agree to furnish it, there is likely to be some searching of heart before increased expenditure is permitted.

The centralized control of the Prime Minister brings one very real benefit. If the executive government thinks that legislation is necessary it can guarantee that it will be enacted. Two difficulties are much discussed in the United States at the present time. One is that the divorce between the executive and the legislative power makes it hard for the executive to secure needed changes in the law. When this is the case the courts are tempted to read into the law a meaning not really to be found there, and thus to usurp the legislative power. The other difficulty is that, under the system of checks and balances, it is often doubtful whether a legislature has the legal right to do what it may think necessary. Neither difficulty has arisen in Canada. The executive government is always in harmony with the legislature, and can thus readily secure changes in the law, and the power of Parliament is so great that its jurisdiction is rarely questioned.

There is little doubt that if, to meet a crisis, a Prime Minister made sweeping proposals, his followers in the Commons would stand by him, for they are under strict party discipline. This discipline is necessary, since the executive government depends for its existence from day to day upon keeping a majority in the House of Commons. The members of the party are expected to follow their leader. The independent member, as Lord Melbourne once said, is the member who cannot be depended upon, and he does not find favor with political leaders. A head of a government has means of punishing a member who may be slack in his support. He can deprive him of the exercise of the government patronage in his district, and a member who loses this is likely quickly to become unpopular with an active section of his followers, and to imperil his re-election.

The control of the Prime Minister tends also to lessen the power of merely local interests. A member of the House of Representatives, of the United States must reside in his state, and it is almost an unwritten law that he must reside in his district. If he is to continue to represent it, he must, while in Congress, make its special interests his chief care. He is usually ready to support other sectional interests, if these, in turn, will support him, and he is not held in check by an executive government which controls a majority in the House. In Canada, on the other hand, a member of the Commons is under no obligation to reside even in the province where his constituency lies. Sectionalism, though a strong and a growing power, is held in check by this provision, and also by the impotence of a private member to force local interests upon the attention of a powerful government which can easily control a majority against him. The private member of Parliament in Canada might well envy, indeed, the greater liberty and authority of a member of Congress. Since the votes of members of Congress can lead to no change in the administration, they feel free to use them in any way that may serve the special interests which they represent. While Congress sits, a member must be always on duty, for his vote is always of some moment. In Canada, where the individual member can do less, he may be rarely in his place without any real loss to his constituents. The government has announced its programme at the beginning of a session and is not likely to support any other important measures.

If a new issue comes up in Canada, even a powerful government may be forced to stake its existence on an appeal to the people. The recent Reciprocity negotiations furnish a cogent illustration of the different workings of the two federal systems. No mention was made of Reciprocity with Canada as a part of Mr. Taft's policy when he was elected President of the United States in 1908, nor was it an issue in Canadian politics during the election of the same year. Suddenly Mr. Taft proposed to Canada a sweeping reciprocity in trade. He urged his measure upon the Congress of the United States and, after a prolonged struggle, it was adopted. Mr. Taft's proposals were approved by the Liberal government in Canada. But, when opposition appeared, Sir Wilfrid Laurier made no attempt to force the measure through the Canadian Parliament. It was clear that, on an issue so important, the people must be consulted, and, in due course, the people gave their verdict. The Liberals were defeated, and the penalty of defeat was the complete loss of political power. It is not impossible that the people of the United States would have condemned Mr. Taft's proposals, had they been called upon to give a verdict, but the constitution does not provide for such an appeal to the people. No proposals made by Mr. Taft imperilled his tenure of office for his full term, while in Canada the defeat of the proposals involved an immediate, vast and far-reaching change in the whole executive government.

No doubt the Canadian system is far from being ideal. The Prime Minister must find his administrators among those who sit in Parliament. The qualities that make a successful politician are not necessarily, however, those which make a successful administrator. When a President of the United States forms a Cabinet, he may choose the ablest men in the country to serve him. Since they are not politicians but administrators, they are free to give their whole time to their tasks, and are not hampered by the irksome duty of taking part in the proceedings of Congress. Occasionally, it is true, a Prime Minister in Canada may choose a Cabinet Minister who possesses high administrative powers but has not sat in either house. But a seat must then be found for him and, to be permanently successful, he must learn the arts of the politician. Thus in Canada the field for choice for members of the Cabinet is limited to some three hundred men who sit in Parliament. Without doubt an American Cabinet, chosen in a freer way, usually represents a higher average of administrative capacity than a Canadian Cabinet.

Another defect of the Canadian system is that the Prime Minister is loaded with such extensive responsibilities that he cannot discharge them adequately. He may be held to account for everything that is done. If incompetence or corruption are found in any department the blame is his. But, while this is the case, there is, as yet, in Canada, no machinery through which he can have adequate supervision of the work of the different departments. In Great Britain the same difficulties have arisen and have been met by giving to the Treasury a measure of control over the outlay in all departments. It supervises contracts, raises questions in regard to prices, and tries to prevent corruption and waste. One improvement that ought to be made in the near future in Canada is the creating of some effective control of this kind.

In Canada the future is likely to see increased emphasis upon the control of the executive by Parliament. In the United States, on the other hand, increased emphasis is being laid upon the independent authority of the President as representing the real mind of the nation. As matters now stand the President of the United States may be elected to carry out a certain policy, only to find himself helpless before a Congress which will not obey him. He may control one chamber of Congress but may be reduced to impotence by failure to control the other. He may give pledges in regard to policy, only to find that he cannot redeem them. He may preach economy and an extravagant Congress may make reckless votes of public money. No doubt the American people will find their own solution of these difficulties in their system. While that of Canada presents difficulties of its own, the people of Canada are well content with the union of the legislative and the executive power. It is the system which the mother of Parliaments has matured as a result of the buffetings of many centuries. It is the system which has at last given to troubled France political stability which she failed to secure by many experiments of a different nature. Canada has not yet learned to make a use of the system as effective as that in England. But already it is working satisfactorily in Canada, and it is likely to develop in such a way as to become steadily more effective.

THE ORGANIZATION OF POLITICAL PARTIES IN CANADA

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To the ordinary man on the street, a general election is only an intermittent opportunity for registering his more or less casual opinion as to men and measures. To the politician such an occasion is a decisive battle, long prepared for, upon the issue of which his political empire hangs.

The average elector takes himself seriously enough. He imagines that he weighs records and that he forms matured judgments quite apart from outside influences. He delights to hear himself referred to as one of the "free and independent electors of the grand old county of X." The politician, however, looks upon the voter very much in the light of a pawn upon the chess-board, moved this way or that according to the nature and the intensity of the forces brought, by careful design, to bear upon him.

Probably neither estimate is wholly correct. Unquestionably there are times when the voter acts upon his own initiative, to the utter disregard of the most carefully prepared plans made on his behalf; but, as a general rule, he is influenced in no small degree, in the supreme act of marking his ballot, by agencies, outside himself, deliberately created and set in motion for the express purpose of securing his support for a particular policy, candidate or party. Hence the *raison d'être* for organization in political warfare.

The political affairs of Canada are carried on under a system of party government. That party which, for the time being, is dominant in Parliament, determines the policy and supervises the administration. His Majesty's loyal opposition, save in the capacity of critics, have little part in the conduct of public business. As long as a Prime Minister can maintain a working majority in the Canadian House of Commons, so long are he and his colleagues all powerful in the exercise of governing power. It is, therefore, in accord with well-recognized laws of self-preservation that the "ins," desirous of prolonging their period of supremacy, and the "outs," anxious to attain office, should each endeavor to make provision for support in the constituencies.

Hence we have in both political parties a more or less perfect organization created, directed and controlled very much after the fashion of a standing army, at all times in readiness for defence or attack.

The organization of a Canadian political party centers at the capital of the Dominion. Here leadership and direction reside. For the party in power, control rests with the Prime Minister, his cabinet and caucus, and that which has been by them authorized is generally accepted by the rank and file. The leader of the opposition has less authority. All his followers rank alike in the party caucus. Yet the dominant note is given in every debate by the opposition "Chief," and generally accepted by his adherents.

From a spectacular point of view, the party campaign appears for the most part as if waged upon the floor of the House of Commons. Here upon the anvil of debate the policy of government and opposition is forged, and the iron ofttimes becomes red-hot under the blows. In these controversies both the "ins" and the "outs" have well-recognized advantages. To a greater extent than is generally admitted, these advantages are compensatory. A party in power commences to develop weaknesses from the day that its ministers are sworn in, while a well-led opposition, in inverse proportion, should be ever growing in strength. As time passes, these advantages and disadvantages become more apparent.

Among the advantages enjoyed by the "ins," is the fact that upon nearly every important public question, they have *the first choice of position.* An important change of policy may have been under consideration by the government for many months without the public having been given any intimation of their intentions. The Ministers may have had ample opportunity to make investigation, to consult and placate interests liable to be hostile, to let loose an occasional *ballon d'essai* to test the temper of public opinion; and, when all this has been done, a Prime Minister can launch his project before an attentive House, support it by a carefully prepared *ex parte* speech, and secure a favorable pre-judgment from a large portion of the electorate before his political opponents shall have had opportunity to acquaint themselves with even the main facts of the case—before, therefore, they are able to offer adequate criticism or present effective resistance.

Where, upon a great public question, there are several views, each widely held, a government may select a midway policy—one likely to appeal to moderate men generally, thus driving a wedge between the units of the opposition, thrusting one group to this extreme, the other group to that, and placing both contingents more at variance with one another than either with the policy of the government itself.

In a new country like Canada, where there are vast resources to be developed, extensive areas to be opened up, and backward communities requiring help, the control of the public purse is of great assistance to the party in power. Many are the constituencies and communities made "solid for the government" by an appropriation to be expended in the county. The member for the favored district makes a speech in support of the expenditure. If the opposition criticize, they incur the risk of being, at some future election, described as unfriendly to the interests of that particular constituency. The government is a vast spending institution, disbursing annually considerably over one hundred million dollars. It can employ a veritable army of men. A vast number of beneficiaries—the government employees, the public contractors, the suppliers of merchandise, the advertisement-fed newspapers, these, and the horde of the yet-hopeful who have not given up expectation of place or patronage—all these go to swell the force upon which a Canadian government can, in no small degree, depend, when endeavoring to obtain an extended lease of power.

Superior opportunity for acquiring knowledge of facts and conditions, the first choice of position upon questions of policy, and the power to promise favor and bestow substantial rewards in return for electoral support—these are some of the advantages enjoyed by the "ins" over their political adversaries. By skilful use of these auxiliaries, a Canadian party may ofttimes enjoy long tenure of office.

But the "outs" are not without compensating advantages. They can always play the Fabian rôle. Upon a thorny question they may withhold definite expression of opinion. "Après vous, Gaston," is ofttimes most excellent tactics. After the government has definitely committed itself to a line of action; after the Prime Minister has declared a given course to be a government measure, then and thereafter amendment or retreat is by no means easy of accomplishment.

If popular disapproval manifests itself, if the proposal of the government proves inacceptable, or the opposition are fortunate enough to devise an alternative more attractive, then do the wheels of the government chariot drive heavily, and its leaders may be forced to acknowledge unwisdom, or risk defeat. An opposition can unsuccessfully oppose a dozen government measures and suffer little in loss of prestige—to criticize and to resist is their metier, say the public—but a government may go down upon a single issue. A solitary error of judgment has more than once sufficed to overturn a powerful administration and to replace it by those whose chief excellency was that they had condemned.

Then, too, the "outs," with freedom from responsibility, and great faith in the short memory of the electorate, may win support by the endorsement and advocacy of fads and reforms. Those, who having demanded unpracticable measures from a government in power are turned disappointed away, find consolation with a sympathetic opposition who rub salt into their wounds and breathe promises into their ears. The camp of the "outs " may become a veritable cave of Adullam, sheltering outlaws of all political factions; and all are welcome, provided they are able and willing to direct telling shafts against the common enemy.

So, in the contest that goes on, session after session, in the House of Commons, each party has its sources of strength and of weakness. In time these come to offset one another, to a considerable degree. Were this not the case, there would be none of those changes of government which are from time to time necessary if honest and progressive administration in Canada is to be maintained.

Political parties never sleep; at least, they should not. The sleeping sickness is fatal. Therefore, no sooner has the smoke of a general engagement cleared away than both victor and vanquished, government and opposition, are engaged in preparation for a fresh encounter. Their methods of defence and attack do not greatly differ; here a description of a campaign from an opposition point of view will serve for purposes of illustration as to methods of organization.

Let us imagine that there has recently been a general election. A strongly entrenched government is in power. A vigilant and fairly numerous opposition occupies the seats to the left of the speaker. Although, in the ordinary course of events, a period of four or five years would elapse before there would again be an appeal to the electorate, the opposition commences at once to prepare for that event. No sooner have the formalities attendant upon the opening of Parliament terminated than the first party caucus is called. It is a strictly private gathering to which none but members are admitted, and attendance thereat is regarded as a tacit admission that the member is willing to abide by the will of a majority of his colleagues. By majority vote, a leader is chosen. He becomes the mouthpiece of his party in the House of Commons and its "Chief" before the country at large. The only other recognized officers of an opposition are the chief whip and his associates, whose duties are mainly to secure the maximum party attendance at important votes in the House.

From the opening day of the first session of a new parliament, the idea or originating proposals that "will take with the country" is never lost sight of by a vigilant opposition.

Resolutions are brought forward in the House, at first tentatively, then with a view of securing support. These are discussed in caucus, argued before the Commons, and, if pushed to a vote by the opposition with the approval of the leader, become planks in the party platform. In former days a party convention, comprising delegates from the general electorate, was considered necessary to ratify a platform and endorse a leader. This procedure, however, no longer is in common use. The members of the party having seats in the House are held to be sufficiently acquainted with the feeling of the country to give expression to the views held by the party at large; hence conventions have fallen into disuse, and the leader and his House-following are taken to adequately represent the party as a whole.

So it transpires that a party platform is nowadays builded in the House itself. One by one planks are prepared, tested, adopted or rejected.

During the intervals between general elections, much is done to acquaint the electorate with the views of the opposition. There are certain newspapers in every province, owned or controlled by friends of the party. The more important of these journals have correspondents in the Press Gallery of the House, who can be depended upon to omit to mention no action likely to create in the public mind a favorable impression. There are other papers throughout the country that will from time to time publish parliamentary letters, if not too strongly partizan in flavor, and for such journals there is prepared the "weekly news letter" which is used by them in a more or less modified form.

Where a campaign is being waged for or against a specific proposal, as for example in the case of the Anti-reciprocity campaign, it is sometimes found advisable to arrange with an advertising agency for the publication of a series of special articles in the weekly papers throughout the country. Such insertions can be arranged for, in nearly all the independent journals, at advertising rates, and, though this procedure makes heavy inroads on the contents of the war chest, it is oftentimes an effective means of carrying the war into the enemy's country.

Members of Parliament are ever watchful for notable speeches delivered in the House on topics likely to be of interest to their constituents, especially such as place the party attitude in a favorable light. During the session, hundreds of thousands of copies of such speeches are sent out to constituents under the member's frank, while counties represented by government supporters are similarly dealt with from a central bureau.

As the election draws near, the Literature Bureau at Ottawa begins to show evidences of activity. It is under the general direction of the chief whip, but for purposes of consultation, he is aided by a committee of members representing all sections of the country. A large number of publications are issued. There is the "Speaker's Hand-Book," a veritable encyclopedia covering the entire range of questions that may have engaged the attention of Parliament for a term of years, with carefully prepared tables of figures, citations and references, intended for the instruction of candidates and speakers who may "take the stump" during the campaign. Further, there is a great variety of leaflets for popular consumption, dealing succinctly with different topics, designed for distribution at public gatherings or to be mailed directly to electors.

The newspaper cartoon, the poster and the illustrated postcard all play an important part. These are arranged for by the central organization, and furnished the candidates in the constituencies as they may advise.

On the judicious selection of literature for each locality and its proper circulation, much of the success in an election undoubtedly depends.

Although in great measure the press has taken the place of the orator, yet public meetings still play no small part in Canadian political contests. During the sessions of Parliament, calls come in to headquarters from all parts of the Dominion for members to go out and address public gatherings upon questions of the day. Arrangements to meet these demands are in the hands of a committee named by caucus, and members of the opposition in *tour de rôle* respond to invitations whenever they come from places within reasonable distance of Ottawa.

Further speakers also must be selected, instructed, tested and prepared for the contest. This involves the providing of opportunities for training, where Members of Parliament, who are experts upon certain subjects, may prepare others who are not members to themselves become teachers.

It is nowadays customary before each general election for the "Chief" of a party to make the grand tour of Canada. He travels from ocean to ocean. As he enters each province, the adherents of the party rally about him and make brave showing of support. During these tours, he accomplishes a double purpose—that of coming in closer contact with local issues and local men, and that of exposing for the benefit of his hearers his views on what is best for Canada as a whole.

To prepare for such tours, arrange for transportation, accommodation, advertizing and reporting, is no light task—and this also is generally planned from Ottawa before the tour commences.

There is also organization of a different character, though of no less importance. It makes little public display, but if faithfully worked out, determines the issue as between victory and defeat. I refer to the creation of what is commonly called the electoral "machine."

It is the aim of the party to have every county in Canada come under the supervision of some permanent organization. A number of counties may be naturally grouped about a common center, as, for instance, the counties of a province geographically accessible from the provincial capital.

A central office, ofttimes serving both federal and provincial party purposes, is created for such a group. Here is installed a salaried official, the party organizer. His duty it is to revive existing local political organizations throughout the constituencies, to assist their members by correspondence and occasional visits, and, where there is as yet no political club, to gather together the sympathetic, and aid in forming a working combination.

The main objective of the party organizer is to create the machinery whereby a truly representative convention may be convened, an acceptable candidate chosen, and the organization for securing success at the polls brought into being. After a candidate has been duly nominated, the local supporters of the party must do the rest; the central organization can henceforth help them only in an advisory capacity.

In the final analysis, organization for an election depends mainly upon the activity and ability of the candidates themselves, and of their intimate supporters. Careful oversight of the voters' lists to prevent the insertion of unqualified names and to secure the addition of all names of persons favorable to the party, the judicious selection and frequent distribution of literature liable to make converts for the policy and friends for the candidate, the selection, training and utilization of a persuasive corps of speakers, the skilful use of the columns of such newspapers as are available or procurable, the active personal canvass by the candidate himself, and finally the preparation of adequate and efficient means for securing the attendance at the polls of every favorable elector—all these are important activities in bringing about the result, and their effectiveness depends mainly on the spirit of the workers in the constituency itself.

It would be hypocrisy to deny that the possession or lack of a campaign fund has a most important bearing on the result in a Canadian election. Without the sinews of war printing presses will not print, orators will not orate, organizers will not organize, and a considerable section of the "free and independent" will omit to arrive at the polling place upon the day appointed. But in perfectly legitimate organization, a large sum of money may be effectively spent and undoubtedly is spent at every election. Were more expended in education and organization during the interval between the contests and less on the day before voting, the results would be more satisfactory to the candidate, and less injurious to the moral tone of Canadian public life.

Every general election brings to the public attention notable examples of cases where patient, business-like and perfectly legitimate organization have won the fight against the lavish, corrupt and indiscriminate use of money. The more we come to depend upon the same class of preparation as a business man would use to secure commercial success, and the less we rely upon eleventh-hour outpourings of a more or less illegal character, the better will it be for the nation and for the public life of Canada.

PRAGMATISM AND POLITICS

BY WARWICK CHIPMAN

Montreal, Canada

It may seem paradoxical to suggest, of a doctrine essentially impatient of the absolute, that it bids fair to become the chief bulwark of an absolutism the more tyrannical because it is false. Yet a democracy forgetting freedom, and a philosophy careless of principles, do, in fact, go hand in hand together. Nowhere better than in politics could the pragmatic creed be applied; and nowhere does it become more immediately clear that pragmatism has no creed. In this it is the motto of democracy in action, which is abandoning more and more not only creeds as creeds, but even the very creed that brought it into being.

In doing so, democracy threatens to entrammel men for a time more effectively than ever they were trammelled in the past, through the very optimism of its crude practicality; seeking to achieve in one generation, and by extraneous rules, the blessings which only the long discipline of character can ever bring to the world. Lovers of liberty, then, if they would serve her now, must see that a philosophy without a standard, a wisdom that will not criticise, a doctrine that will not lead, is the greatest foe of all they have to fight.

An irreverent critic once remarked that doubtless we should all like to be pragmatists if only we knew what we should be if we were pragmatists. I am sure that it would be very easy for any accommodating person to find out that he was on the whole a pragmatist. But with a full reserve of my right to be accommodating on some other occasion, the present purpose requires a sterner frame of mind. Pragmatism is a big belief quite satisfactory to those only whose belief is still bigger. It is, I take it, the doctrine that an idea is true if it works. But inasmuch as not all that works is worth working; inasmuch as not all that works for to-day, works in the long run; inasmuch as it is as well to know, before practical demonstration, whether or not we are working with temporal dynamite; and inasmuch as Pragmatism considers none of these things: I wish to suggest that it is not altogether admirable when applied to politics.

At first sight it must appear ungrateful to quarrel with a school that proclaims faith as the greatest of human forces. For no one could ask a better inspiration. But what is the faith that is to be this force? Here Pragmatism is silent, giving us a handle, but no tool. Strange, then, that its most brilliant exponent should begin his lectures upon it by this quotation from Mr. Chesterton: "There are some people—and I am one of them—who think that the most practical and important thing about a man is still his view of the universe. . . . We think that for a general about to fight an enemy it is important to know the enemy's numbers, but still more important to know the enemy's philosophy. We think the question is not whether the theory of the cosmos affects matters, but whether in the long run anything else affects matters."—Where so much is granted to theory, what, may we ask, is left to practicality?

In point of fact, however, the quotation from Mr. Chesterton is most inapplicable to Pragmatism, which usually is careful to disclaim any attitude so superior, so dogmatic, as the theoretical. It is unsparing in its criticism of the absolute, because the absolute does not achieve. It has an utter contempt for all the treatises "on God and Love and Being, helplessly existing in their monumental vacuity." There is, indeed, a certain amount of justification for this standpoint. A philosophy, above all a political philosophy, which exalts the human will but never dallies with short cuts to human victory, which bids men enter by the door and not climb up some other way, is apt to leave considerably comfortless those children of men who could perhaps be wiser in their generation than the children of light. Idealism mends no broken hearts. It is no lasting substitute for bread and butter. If we seek in it the omnipotent prescriptions of quackery, we shall not find them. But while it cannot profess to cure the evils of this world, it does attempt to prevent them. It strives to teach the principles that in the long run will do away not with broken hearts but with the breaking of them, not with physical starvation but with the moral and spiritual conditions that lead to it. Compared with so fundamental a practicality, what has Pragmatism to show? A method which concentrates on mere success, and which fails to judge between this success and that, is, to the extent of such a failure, not practical enough.

The chief quarrel of Pragmatism with the Absolute is its alleged supreme indifference to what the particular facts in our world really are. "Be they what they may, the Absolute will father them. Like the sick lion in Aesop's fable, all footsteps lead into his den, but *nulla vestigia retrorsum.* You cannot redescend into the world of particulars by the Absolute's aid, or deduce any necessary consequences of detail important for your life from your idea of his nature. He gives you indeed the assurance that all is well with him, and for his eternal way of thinking; but thereupon he leaves you to be finitely saved by your own temporal devices."

Now this is very true of certain phases of philosophy, and the more is the pity. But is it not in some measure true of Pragmatism itself? Anything may go into the den of the doctrine that anything is true if it works, that anything will work that is worked, and therefore that anything is true. But what is the practical result of this stupendous syllogism? What is to be worked? What shall we choose from among infinite possibilities? On what grounds shall we choose?

A standard we must have, and a standard must be taught us by a philosophy with any pretensions to the name. When the pragmatist declares that "what is better for us to believe is true *unless the belief incidentally clashes with some other vital benefit,*" he admits the necessity of a standard. Indeed, the pragmatist is continually going far beyond the borders of Pragmatism, and in so doing is making it clear that in order to be a good pragmatist you must be infinitely more. Thus Dr. James, when he says "The notion of God has this practical superiority . . . that it guarantees an ideal order that shall be permanently preserved," and again: "This need of an external moral order is one of the deepest needs of our breast. The absolute things, the last things, the overlapping things, are the truly philosophic concerns; all superior minds feel seriously about them, and the mind with the shortest views is simply the mind of the more shallow man."

The only trouble is that not every pragmatist is a good pragmatist; and that Pragmatism is apt to be hailed by many as a brilliant unimpeachable angel succouring and justifying the shorter view. They are apt to find in it the expression of their own resolve to be shallow, and to make it the splendid banner of their thoughtlessness. They are happy to proclaim their very want of method as itself a method; and, in repulsing attacks upon their rough and ready means to unconsidered ends, they eagerly find in Pragmatism their sanction and their name.

"The influence of democracy in promoting Pragmatism," said the *Edinburgh Review*, "is visible in almost every page of William James's writing. There is an impatience of authority, an unwillingness to condemn widespread prejudices, a tendency to decide philosophical questions by putting them to the vote, which contrast curiously with the usual dictatorial tone of philosophic writings. Dr. Schiller at one time set to work to elucidate the question of a future life by taking a poll. William James claims for the pragmatist temper 'the open air and possibilities of nature, as against dogma, artificiality, and the pretence of finality in truth.' A thing which simply *is* true, whether you like it or not, is to him as hateful as a Russian autocracy."

Now, it is quite true that at stated intervals democracy still pays its homage to freedom as a standard. It is quite true that democracy praises its constitutions, amid great applause, as the guardians of freedom. But more and more as we see Democracy at work, we find that freedom is quite forgotten in the exaltation of some shibboleth that has no meaning save as a means to freedom; that some constitutional abstraction is insisted on as an end in itself; that the immediate wishes of the people are considered as ends in themselves, and suffer no criticism from the standpoint of that liberty which, in politics, can be the only ultimate and lasting aim.

And what are the results, as unexpected as the acts themselves are uninformed?

Take, for an example, universal suffrage. As a notion and a name it has to do with liberty, but as a result does it increase the number of men able to protect their freedom, or does it, when exercised too soon, increase only the number of those able to override the freedom of others? Does it mean one man, one vote? Or does it mean that the practical politician who formerly manipulated forty votes to his own undemocratic purposes will thereafter manipulate forty score?

Or take the cry for the recall of the judges, which is greeting the ears of some of us on this Continent. Here we have in its most glaring form the notion that voting is an end in itself, and that Democracy exists as a system in order that its momentary likes and dislikes may be exalted at the expense of all stability, consistency and order. The doctrine upon which was founded the chief, the most weighty, the most respected judicial body in the United States, that freedom was best served by making the dispensers of the law independent of popular clamour and of class interests, is to be laid aside without any reference to the real meaning and needs of freedom.

It would almost seem as though Democracy might prefer to do away with the judges altogether and to substitute the pronouncement of a majority, through the medium of the daily press. We have recently seen the edifying spectacle of a large class of persons, who keep Democracy in their pockets, first of all subsidizing the defense of certain men accused of murder, and then, when defense became impossible, and when they were convinced that there had been, as their odd phrase put it, "a crime against unionism as well as against humanity," facing about and forming what is called "a country-wide movement to obtain the maximum punishment of these men," without any thought or reference either to the law which as citizens they set up, or to the judges whom equally they appoint to administer it.

Oddly enough the same Democracy, constituting itself both judge and jury, is unable to supply from among its numbers twelve good men and true to try the case at close range. A *cause célèbre* is presented to an astonished country in which the chief witness for the prosecution gives his testimony before an association of bankers; the advocate for the defense harangues not the Court but the newspapers; and the judge is besought to do anything but try the case and give the judgment. To such a pass does the pragmatic spirit bring those constitutional forms which an age-long struggle for reasonable safeguards of freedom has so laboriously attained.

Let it be remembered, too, that at the very moment when Democracy seems about to take over a part of the constitution in which it was never schooled, it is abandoning to arbitrary committees just those subjects which it ought most assiduously to control. In the judicial sphere of the state where expert administrators could far better maintain rights and prevent infringements than could any interested and short-seeing voters, an arbitrary ballot is to supplant an impartial arbiter. But of that department, embracing taxation and the freedom of contract, where universal interest is the surest ally of liberty, commissions, discretionary and domineering, are to be handed the charge.

In Canada, a new government proposes to put the tariff under the control of a commission. It will entrust to an executive body what should never be taken out of the sphere of parliamentary debate. It will turn into a department what ought to be the most constant of political issues. It will compromise the State, as far as can be seen, by the inherent views of only one of the political parties; and, by so doing, will be the most effective means of preventing any criticism of those views. All this will be done in the name of practicality, by men who have never considered for a moment the bearing of it all upon their constitution and their liberty.

To speak of the regulation of great corporations now being so elaborately considered on this Continent would require a volume at least. Perhaps it may yet be discovered by the people at large, or rather by those who will influence the people at large, that it is vain to attempt the cure of diseases, where you authorize, by high protection, the conditions that bring about these diseases. To those who believe firmly in this, there can be no patience with the foundationless practicality that first of all creates a vested interest by a taxation which is an infringement of the liberty of every one of us without furthering the necessary ends of the State, and that then interferes with the new rights which it brought into being. But where no one will dare to preach the true theory of the State, where everybody desires to do only that which is immediately practical, freedom must continue to suffer, in spite of all the statues, and all the orations.

Similarly with regard to the commissions which are being formed to deal with the contracts between consumers and monopolies. How far these bodies will help to maintain the liberty of contract, how far they will really hinder it, are immense questions; but before these questions are considered, we are all hurrying into legislation, with the sole desire to be practical. In the discussions that take place from time to time with regard to the governmental supervision of public service corporations, you will find an infinity of speech upon the meaning of the phrases: "Going Concern," "Good will," "Fair profit," and the like: You will find almost nothing with regard to the function of the State, the liberty of the subject, and the propriety of resigning to the discretion of a few what should be under the discussion of the whole. In so far as these Commissions do serve liberty, Democracy has made a confession of failure. The trouble is that Democracy does not know it.

But an essay cannot attempt to say what it took Mr. Lecky a book to declare. Let me simply quote for my purposes now his conclusions on this very subject of Democracy and liberty. "In our day," he says, "no fact is more incontestable and conspicuous than the love of Democracy for authoritative regulation. The two things that men in middle age have seen most discredited among their contemporaries are probably free contract and free trade. The great majority of the democracies of the world are now frankly protectionist, and even in free trade countries the multiplication of laws regulating, restricting and interfering with industry in all its departments is one of the most marked characteristics of our time."

Let me also quote, in comment, this from a recent speech of the Dean of St. Paul's:

"The first duty of any one who wants to understand the signs of the times is a critical examination of current shibboleths and catchwords. It is quite as easy to hypnotize oneself into imbecility by repeating in solemn tones 'progress, democracy, corporate unity,' as by repeating the blessed word Mesopotamia. Democracy is perhaps the silliest of all the fetishes that is worshipped among us. The method of counting heads instead of breaking them is no doubt convenient as a rough and ready test of strength, and no doubt government must rest mainly on force. It is also arguable that democracy is at present a good instrument for procuring social justice and educating citizens in civic duty, but that is really all that any one has a right to say. To talk to the average member of Parliament one might suppose that the ballot-box was a sort of Urim Thummim for ascertaining the Divine will. This superstition is simply our old friend the divine right of Kings standing on its head. It is even more ridiculous in the new posture than in the old. There is absolutely no guarantee in the nature of things that the decision of the majority will be either wise or just, yet this ridiculous fetish stands grinning in our faces, and the whole nation burns incense before it."

My point then is that Pragmatism is merely a philosophical expression of all this, and a means to crown it with a dignity which otherwise it would lack. In consequence it is the more astonishing that Pragmatism should quote from Mr. Chesterton as to the immense import of plain theory. For Mr. Chesterton is quite right when you apply his statement to politics. It is another part of the present subject to show that the only ultimate power in politics is an idea, a theory, a principle, not a rule. Nothing is an end in itself; and where that is overlooked, there is no power. The sanction of the State is nothing unless based upon a greater sanction than itself. There is a standard of liberty by whose criticisms we must in the long run abide or we can make no progress. There is a force, invisible, inexhaustible, whose ends alone are supreme, and in touch with which alone our narrower ends can lastingly survive.

The wisest of kings said long ago that the very true beginning of wisdom was the desire of discipline. He meant the readiness to be led by great principles; and the scorn of a practice that had no creed behind it, and no eternal path before; of a Pragmatism that did not know where it was going, or why, or how. In what way can that discipline come, by what possibility can it bring us to the Kingdom of our best and happiest, in a state where the only test of truth and of good is the power to accomplish quick and limited ends? How are we to achieve liberty if the mere power of a majority is to be exalted over the power of ultimate things; if the appeal is to be made to the essential tyranny of men, rather than to their overwhelming necessity for freedom? The more we ask these questions, the more we know that the greatest need of a Democracy, to-day as always, is an aristocracy, building advance on criticism; and preaching that truth and that good which, if they are made one with the universe, can never be taken away.

That such a truth is already recognized by the State will be abundantly clear to those who, turning from the spasmodic turmoil of Democracy, will watch the sober progress of the common law. Democracies and majorities are accustomed to think of the law as the creature of law makers. Happily for freedom, happily for those who wish to guard in themselves that which they never attack in others, happily for all who wish to see the characters and commonwealth of men advance by a discipline which no machinery can teach, society is held together and governed, in the last resort, not by the might of numbers, not by the assertion of arbitrary power, but by the quiet sovereignty of an idea.

We may see it in continual action; we may see it in continual restraint of action. We may know it as the constant critic of all other ideas, however pragmatic. We may know it as something vastly bigger, more far-reaching, more authoritative, than all codes, statutes, precedents, and rules. If all the legislatures and all the voters were to attempt to create a law of obligations that took no account of this idea, how futile in the end would be their bills, ordinances, and votes! If, when watching the interminable procession of deeds, titles and contracts, lawyers were to wish, by some wayward agreement, to consider harmless all flaws and irregularities, how simply they could agree, how unalterably they cannot! How irresistably it would appear that the legal principles which govern the greater part of daily life are not the arbitrary inventions of particular communities: they are community itself.

And more than this. The Courts are beginning to recognize, although rightly they do not administer, the very essence of the moral law. They are beginning to declare that if a man does not fulfill a moral duty he may lose a legal right; that by failing to do as he would be done by he may limit the extent to which he can make the State his instrument. This attitude is purely negative. It does not move one step beyond the point of refusing redress in certain circumstances. It leaves to private will the doing of what one ought, and to private punishment, the consequences of not so doing. But it recognizes for State and citizens alike, arising out of the inexhaustible maze of practical affairs, the serene domination of a power beyond and above the State, determining its dealings, sanctioning its awards.

To that power, free and necessarily recognized as free, belongs the discipline of this world, discovering that only when all willingly do their best by their fellows can we have a civilization and a happiness which shall stand; and that only the universal rule of such morality can put an end to the particular evils of men. Every other government that men may devise must fail: this alone can succeed. Every other must be judged by its fruits: this alone dominates fulfillment. Every other is abstract and provisional: this, only, is concrete and endures.

If, then, the law of the State inevitably admits the law of liberty around it, we may be sure that every expression of the wills of men, and every instrument of that expression, including Democracy itself, must finally bow to judgment. Until they do; until they acknowledge the law that is the only master of all because it is the only servant of all; until they know the limits of the State in the sphere of obligations: any constitution under any name can and will be tyrannical. In the long run, there is but one power to preserve men from absolutism. That power is the absolute itself.

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